

Section 6050S.— Returns Relating to Higher Education Tuition and Related Expenses

26 CFR 1.6050S–2T: Electronic furnishing of information statements for qualified tuition and related expenses (temporary).

T.D. 8992

DEPARTMENT OF THE TREASURY

Internal Revenue Service
26 CFR Parts 1, 301, and 602

Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the information reporting requirements under section 6050S for payments of interest on qualified education loans, including the filing of information returns on magnetic media. The final regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations provide guidance to payees receiving interest payments on qualified education loans.

DATES: *Effective date:* These regulations are effective April 29, 2002.

Applicability date: For date of applicability, see § 1.6050S–3(g).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622-4910; and concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the Internal Revenue Service, Martinsburg Computing Center, (304) 263-8700 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1678. Responses to this collection of information are mandatory.

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

The estimated burden for the reporting in these regulations is reflected in the burden for Form 1098-E.

Estimated total annual reporting burden for 2000 for Form 1098-E: 483,098 hours.

Estimated number of responses for 2000 for Form 1098-E: 9,661,965.

Estimated average annual burden hours per response for Form 1098-E: 3 minutes.

Comments concerning the accuracy of this burden and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and 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.

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting requirements under section 6050S. The Taxpayer Relief Act of 1997 (Public Law 105-34 (111 Stat. 788) (TRA '97)) added section 221 of the Internal Revenue Code (Code) to allow certain taxpayers who pay interest on qualified education loans to claim a Federal income tax deduction for their interest payments. In general, as enacted by TRA '97, a deduction is allowed for interest payments made during the first 60 months in which interest payments are required on a qualified education loan. However, no interest deduction is allowed for any interest paid before January 1, 1998. On January 21, 1999, the IRS issued proposed regulations (REG-116826-97, 1999-1 C.B. 701) under section 221. See 64 FR 3257 (1999). Section 221 was amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16 (115 Stat. 38)) to eliminate the limitation on the number of months during which interest paid on a qualified education loan is deductible, effective for interest paid after December 31, 2001, and to allow a deduction for voluntary payments of interest.

TRA '97 also added section 25A of the Code to provide the Hope Scholarship Credit and the Lifetime Learning Credit (education tax credit). In general, the education tax credit allows certain taxpayers who pay qualified tuition and related expenses to an eligible educational institution to claim a nonrefundable credit against their Federal income tax liability. On January 6, 1999, the IRS issued proposed regulations (REG-106388-98, 1999-1 C.B. 756) under section 25A. See 64 FR 794 (1999).

In addition, TRA '97 added section 6050S of the Code. Section 6050S was amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206 (112 Stat. 685) (RRA '98)) and Public Law 107-131 (115 Stat. 2410). In general, section 6050S requires certain payees who receive payments of interest on one or more qualified education loans to file information returns and to furnish written information statements to assist taxpayers

and the IRS in determining any interest deduction allowable under section 221. In addition, section 6050S requires eligible educational institutions to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any education tax credit allowable under section 25A (as well as other tax benefits for higher education expenses). See H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess., pp. 319-320 (1998). Similarly, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified tuition and related expenses to file information returns and to furnish written information statements.

Section 6050S(b) provides that the information return filed by payees who receive payments of interest on qualified education loans must contain: (1) the name, address, and taxpayer identification number (TIN) of the individual with respect to whom payments of interest on qualified education loans were received; (2) the aggregate amount of interest received for the calendar year from such individual; and (3) such other information as the Secretary may prescribe.

The IRS has published several notices describing the information reporting requirements for payees who receive interest on qualified education loans during the years 1998, 1999, 2000, and 2001. See Notice 98-7 (1998-1 C.B. 339), Notice 98-54 (1998-2 C.B. 641), Notice 99-37 (1999-2 C.B. 124), and Notice 2000-62 (2000-2 C.B. 587).

A notice of proposed rulemaking under section 6050S (REG-105316-98, 2000-2 C.B. 98) was published in the **Federal Register** (65 FR 37728) on June 16, 2000, addressing the information reporting requirements for eligible educational institutions and insurers and payees who receive interest on qualified education loans. A public hearing was held on the proposed regulations on February 13, 2001. The IRS received written and electronic comments responding to the notice of proposed rulemaking.

The IRS and the Treasury Department have determined that the proposed regulations in § 1.6050S-1 addressing the information reporting requirements for eligible educational institutions and insurers

should be withdrawn and that new proposed regulations should be issued. The IRS will issue proposed regulations in § 1.6050S-1 in a separate document. The proposed regulations in § 1.6050S-2 addressing the information reporting requirements for payees who receive payments of interest on qualified education loans are adopted as amended by this Treasury decision and redesignated as § 1.6050S-3. The comments received in connection with these regulations and the revisions are discussed in the “Explanation of Provisions and Summary of Comments” of this preamble.

Temporary regulations (66 FR 10191) and a notice of proposed rulemaking by cross reference (REG-107186-00, 2001-1 C.B. 973) (66 FR 10247) under section 6050S were published in the **Federal Register** on February 14, 2001. Those regulations allow eligible educational institutions and payees who receive interest on qualified education loans to furnish information statements electronically to students and borrowers, respectively, if certain requirements are met. The temporary regulations for eligible educational institutions were designated as § 1.6050S-1T, and the temporary regulations for payees were designated as § 1.6050S-2T. The IRS and the Treasury Department have determined that those regulations should be finalized in a separate document. However, this Treasury decision redesignates § 1.6050S-1T and § 1.6050S-2T as § 1.6050S-2T and § 1.6050S-4T, respectively.

Explanation of Provisions and Summary of Comments

1. Information Reporting for Payments of Interest on Qualified Education Loans

The proposed regulations require any person engaged in a trade or business that receives from any payor interest of \$600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and the regulations thereunder) (a payee) to file a Form 1098-E, *Student Loan Interest Statement*, with the IRS. Under the proposed regulations, a payee must report the name, address, and taxpayer identification number (TIN) of the payee; the name, address, and TIN of the payor; and the aggregate amount of interest received

during the calendar year from the payor. The final regulations retain these rules. As explained in the preamble to the proposed regulations, a payee may be the lender, the holder of the loan, or the loan servicer.

Consistent with TRA '97, the proposed regulations provide that a payee is required to report interest payments received on a qualified education loan during only the first 60 months in which interest payments are required on the loan. The Economic Growth and Tax Relief Reconciliation Act of 2001 repealed the limitation on the number of months during which interest paid on a qualified education loan is deductible, effective for interest paid after December 31, 2001. Therefore, the final regulations eliminate the 60-month reporting period, so that payees must continue to report annually interest payments on qualified education loans.

A. Section 221 comments

The proposed regulations provide that, in determining the aggregate amount of interest payments to be reported by a payee, the term *interest* includes stated interest, loan origination fees (other than any fees for services), and capitalized interest as described in the regulations under section 221. Several commentators requested that other fees, such as insurance, be treated as deductible interest for purposes of section 221. In addition, several commentators requested clarification of, or changes to, the manner in which payments are allocated to interest, the definition of *qualified education loans*, and the ability to estimate capitalized interest. These comments were not considered in these regulations, which address only the information reporting requirements for interest payments on qualified education loans under section 221, but the comments will be considered in finalizing the regulations under section 221.

B. Reporting of interest received or collected by one or more persons

Section 6050S(f) requires that, in the case of any person who receives any amount on behalf of another person, only the first person receiving the amount is required to comply with the information

reporting requirements. Based on section 6050S(f), the proposed regulations provide that if a payee contracts with another person to receive or collect interest payments on a qualified education loan on its behalf, the other person must comply with the information reporting requirements. Commentators requested clarification of how this rule would apply if a payee contracts with multiple parties, such as a billing service and a collection agent. Other commentators requested clarification of the rule for noncontractual arrangements and how the rule would apply if the person receiving the payments does not ordinarily possess the payor information required to file information returns (e.g., a lock-box agent, a bankruptcy trustee, or a collection agency). The commentators suggested that the regulations provide that if a person collects or receives payments on a qualified loan on behalf of another person (whether or not a formal contract exists), the person collecting or receiving the payments must satisfy the reporting requirements, unless the other person does not possess the information needed to comply with the reporting requirements. This recommendation is consistent with the provisions of section 6050H and the regulations thereunder; therefore, the final regulations adopt this recommendation.

C. Forms 1098-E filed by third-party

Several commentators requested that the final regulations permit a payee to contract with a third party to file Forms 1098-E, *Student Loan Interest Statement*, and to furnish the information statements. The general instructions to Form 1099 and Form 1098 allow a filing agent if certain requirements are met. Therefore, the final regulations do not need to adopt this recommendation.

D. Information statement

Several commentators requested that the final regulations eliminate the requirement that a payee furnish certain instructions to a payor with the information statement. The commentators explained that the instructional language implies that the payee is able to provide tax assistance. The instructions that a payee is required to furnish with the information statement alert the payor to the limitations

on the deductibility of reported interest. In addition, the instructions clearly state that the payor should refer to the IRS forms and publications for information regarding the deductibility of reported interest. Therefore, the final regulations do not eliminate the required instructions; however, the regulations clarify that the payor should refer to the IRS forms and publications, and not the payee, for tax information.

The proposed regulations provide that the information statement must include the name, address, and phone number of the individual who is the information contact for the payee that filed the Form 1098-E. It is often not feasible for payees to identify a specific individual as the information contact. Therefore, the final regulations provide that the information statement must include the name, address, and phone number of an office or department of the payee as the information contact.

E. Payment adjustments after returns filed

Other commentators requested that the final regulations provide specific rules for reporting interest payment adjustments made after information returns have been filed with the IRS. The commentators stated that requiring reporting of adjustments to interest previously reported would be overly burdensome. The final regulations do not need to include specific rules because additional interest payments received in a subsequent year that relate to interest payments reported in a prior year are reportable in the year of receipt. Further, a payee is not required to report reimbursements or refunds of interest payments previously reported. However, a payee should file corrected information returns to report interest payments that were incorrectly reported in a prior year.

F. Effective date of regulations and continuation of Notice 98-7 for the calendar year 2002

The proposed regulations provide that the regulations will apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2001. Several comments were received on the proposed

effective date. Several commentators recommended that the final regulations apply to new loans made on or after January 1 of the year that is 24 months after publication of the final regulations and that loans made before that date remain subject to the requirements in Notice 98-7, as modified. Other comments requested a period of at least 12 months after publication of final regulations to make programming changes to implement required reporting with respect to loan origination fees and capitalized interest.

Further comments requested that the reporting requirements in Notice 98-7, as modified, continue for information returns required to be filed, and information statements required to be furnished, for interest payments received during calendar year 2002 (for which the returns and statements are required to be filed and furnished in 2003). In general, the final regulations do not impose any significant reporting requirement beyond the reporting currently required by Notice 98-7, as modified, and Form 1098-E. However, in response to comments, the IRS and the Treasury Department extend Notice 98-7, as modified, for the calendar year 2002. Therefore, the final regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003 (for interest payments received during calendar year 2003). In addition, in order to provide additional time for payees to implement reporting of loan origination fees and capitalized interest, the final regulations provide that a payee is not required to report payments of such amounts as interest for qualified education loans made before January 1, 2004.

2. Requirement to File Information Returns on Magnetic Media

The final regulations amend the regulations under section 6011(e) to require payees who are required to file 250 or more Forms 1098-E to file on magnetic media.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been

determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis has been prepared for the collection of information in this Treasury decision. This analysis is set forth in this preamble under the heading "Final Regulatory Flexibility Analysis." Pursuant to section 7805(f), the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Final Regulatory Flexibility Analysis

The collection of information contained in § 1.6050S-3 is needed to assist the IRS and taxpayers in determining the amount of any interest deduction allowable under section 221. The objectives of these regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the regulations may apply are certain payees (*e.g.*, a lender, a holder of the loan, or a loan servicer) who receive interest payments of \$600 or more on qualified education loans.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the regulations requiring filing Forms 1098-E on magnetic media impose no additional reporting or record-keeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that a payee is not required to file Forms 1098-E on magnetic media unless required to file at least 250 or more returns during the year. Finally, the economic impact caused by requiring Forms 1098-E on magnetic media should be minimal because most payee's operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a

showing of hardship. The waiver authority will be exercised so as not to unduly burden payees lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Drafting Information

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

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 is amended by removing the entry for “Section 1.6050S–1T” and by adding entries in numerical order to read in part as follows:

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

Section 1.6050S–3 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–4T also issued under 26 U.S.C. 6050S(g). * * *

Par. 2. Sections 1.6050–1T and 1.6050S–2T are redesignated as §§ 1.6050S–2T and 1.6050S–4T, respectively, and amended by revising the section headings to read as follows:

§ 1.6050S–2T Electronic furnishing of information statements for qualified tuition and related expenses (temporary).

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§ 1.6050S–4T Electronic furnishing of information statements for payments of interest on qualified education loans (temporary).

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Par. 3. Sections 1.6050S–0 and 1.6050S–3 are added to read as follows:

§ 1.6050S–0 Table of contents

This section lists captions contained in section 6050S.

§ 1.6050S–2T Electronic furnishing of information statements for qualified tuition and related expenses.

- (a) Electronic furnishing of statements.
 - (1) In general.
 - (2) Consent.
 - (i) In general.
 - (ii) Change in hardware or software requirements.
 - (iii) Example.
 - (3) Required disclosures.
 - (i) In general.
 - (ii) Paper statement.
 - (iii) Scope and duration of consent.
 - (iv) Post-consent request for a paper statement.
 - (v) Withdrawal of consent.
 - (vi) Notice of termination.
 - (vii) Updating information.
 - (viii) Hardware and software requirements.
 - (4) Format.
 - (5) Posting.
 - (6) Notice.
 - (i) In general.
 - (ii) Undeliverable electronic address.
 - (iii) Corrected statements.
 - (7) Retention.
 - (b) Effective date.

§ 1.6050S–3 Information reporting for payments of interest on qualified education loans.

- (a) Information reporting requirement in general.
- (b) Definitions.
 - (1) Interest.
 - (2) Payor.
 - (c) Requirement to file return.
 - (1) Form of return.
 - (2) Information included on return.
 - (3) Time and place for filing return.
 - (i) In general.
 - (ii) Extensions of time.
 - (4) Use of magnetic media.
 - (d) Requirement to furnish statement.
 - (1) In general.
 - (2) Time and manner for furnishing statement.
 - (i) In general.
 - (ii) Extensions of time.
 - (3) Copy of Form 1098–E.

(e) Special rules.

- (1) Transitional rule for reporting of loan origination fees and capitalized interest.
- (2) Qualified education loan certification.
- (3) Payments of interest received or collected by one or more persons.
 - (i) In general.
 - (ii) Exception.
- (4) Reporting by foreign persons.
- (5) Governmental units.
- (f) Penalty provisions.
 - (1) Failure to file correct returns.
 - (2) Failure to furnish correct information statements.
 - (3) Waiver of penalties for failures to include a correct TIN.
 - (i) In general.
 - (ii) Acting in a responsible manner.
 - (iii) Manner of soliciting TIN.
 - (4) Failure to furnish TIN.
 - (g) Effective date.

§ 1.6050S–4T Electronic furnishing of information statements for payments of interest on qualified education loans.

- (a) Electronic furnishing of statements.
 - (1) In general.
 - (2) Consent.
 - (i) In general.
 - (ii) Change in hardware or software requirements.
 - (iii) Example.
 - (3) Required disclosures.
 - (i) In general.
 - (ii) Paper statement.
 - (iii) Scope and duration of consent.
 - (iv) Post-consent request for a paper statement.
 - (v) Withdrawal of consent.
 - (vi) Notice of termination.
 - (vii) Updating information.
 - (viii) Hardware and software requirements.
 - (4) Format.
 - (5) Posting.
 - (6) Notice.
 - (i) In general.
 - (ii) Undeliverable electronic address.
 - (iii) Corrected statements.
 - (7) Retention.
 - (b) Effective date.

§ 1.6050S–3 Information reporting for payments of interest on qualified education loans.

(a) *Information reporting requirement in general.* Except as otherwise provided

in this section, any person engaged in a trade or business that, in the course of that trade or business, receives from any payor (as defined in paragraph (b)(2) of this section) interest payments that aggregate \$600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and the regulations thereunder)(a payee) must—

(1) File an information return, as described in paragraph (c) of this section, with the Internal Revenue Service with respect to the payor; and

(2) Furnish a statement, as described in paragraph (d) of this section, to the payor.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Interest.* *Interest* includes stated interest, loan origination fees (other than fees for services), and capitalized interest as described in the regulations under section 221. See paragraph (e)(1) of this section for a special transitional rule relating to reporting of loan origination fees and capitalized interest.

(2) *Payor.* *Payor* means the individual who is carried on the books and records of the payee as the borrower on a qualified education loan. If there are multiple borrowers, the principal borrower on the payee's books and records is treated as the payor for purposes of section 6050S and this section.

(c) *Requirement to file return—*(1) *Form of return.* A payee must file an information return for the payor on Form 1098-E, *Student Loan Interest Statement*. A payee may use a substitute for Form 1098-E if the substitute form complies with the applicable revenue procedures relating to substitute forms.

(2) *Information included on return.* A payee must include on Form 1098-E—

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

(ii) The name, address, and TIN of the payor;

(iii) The aggregate amount of interest payments received during the calendar year from the payor; and

(iv) Any other information required by Form 1098-E and its instructions.

(3) *Time and place for filing return—*

(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the Form 1098-E must be filed on or before February 28 (March 31 if filed electronically)

of the year following the calendar year in which interest payments were received. A payee must file Form 1098-E with the Internal Revenue Service according to the instructions to Form 1098-E.

(ii) *Extensions of time.* The Internal Revenue Service may grant a payee an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098-E and applicable revenue procedures for rules relating to extensions of time to file.

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

(d) *Requirement to furnish statement—*

(1) *In general.* A payee must furnish a statement to each payor for whom it is required to file a Form 1098-E. The statement must include—

(i) The information required under paragraph (c)(2) of this section;

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

(iii) Instructions that—

(A) State that, under section 221 and the regulations thereunder, the payor may not be able to deduct the full amount of interest reported on the statement;

(B) In the case of qualified education loans made before January 1, 2004, for which the payee does not report payments of interest other than stated interest, state that the payor may be able to deduct additional amounts (such as certain loan origination fees and capitalized interest) not reported on the statement;

(C) State that the payor should refer to relevant Internal Revenue Service forms and publications, and should not refer to the payee, for explanations relating to the eligibility requirements for, and calculation of, any allowable deduction for interest paid on a qualified education loan; and

(D) Include the name, address, and phone number of the office or department of the payee that is the information contact for the payee that filed the Form 1098-E.

(2) *Time and manner for furnishing statement—*(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a payee must furnish the statement

described in paragraph (d)(1) of this section to the payor on or before January 31 of the year following the calendar year in which payments of interest on a qualified education loan were received. If mailed, the statement must be sent to the payor's last known address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Extensions of time.* The Internal Revenue Service may grant a payee an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 1098-E and applicable revenue procedures for rules relating to extensions of time to furnish statements.

(3) *Copy of Form 1098-E.* A payee may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 1098-E and its instructions or another document that contains all the information filed with the Internal Revenue Service and the information required by paragraph (d)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements.

(e) *Special rules—*(1) *Transitional rule for reporting of loan origination fees and capitalized interest.* For qualified education loans made before January 1, 2004, a payee is not required to report payments of loan origination fees and capitalized interest as interest under section 6050S and this section.

(2) *Qualified education loan certification.* If a loan is not subsidized, guaranteed, financed, or is not otherwise treated as a student loan under a program of the Federal, state, or local government or an eligible educational institution, a payee must request a certification from the payor that the loan will be used solely to pay for qualified higher education expenses. A payee may use Form W-9S, *Request for Student's or Borrower's Social Security Number and Certification*, to obtain the certification. A payee may establish an electronic system for payors to submit Forms W-9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to obtain the payor certification or may incorporate the certification into other forms customarily used by the payee, such as loan applications, provided

the certification is clearly set forth. If the certification is not received, the loan is not a qualified education loan for purposes of section 6050S and this section.

(3) *Payments of interest received or collected by one or more persons*—(i) *In general.* Except as otherwise provided in paragraph (e)(3)(ii) of this section, if a person collects or receives payments of interest on a qualified education loan on behalf of another person (e.g., a lender), the person collecting or receiving the interest must satisfy the information reporting requirements of this section. In this case, the reporting requirements do not apply to the transfer of interest to the other person.

(ii) *Exception.* If the person collecting or receiving payments of interest on a qualified education loan on behalf of another person (e.g., a lender) does not possess the information needed to comply with the information reporting requirements of this section, the other person must satisfy the information reporting requirements of this section.

(4) *Reporting by foreign persons.* A payee that is not a United States person (as defined in section 7701(a)(30)) must report payments of interest it receives on a qualified education loan only if it receives the payment—

(i) At a location in the United States; or

(ii) At a location outside the United States if the payee is—

(A) A controlled foreign corporation (within the meaning of section 957(a)); or

(B) A person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the taxable year in which interest payments were received (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(5) *Governmental units.* A governmental unit, or an agency or instrumentality of a governmental unit, that receives from any payor interest payments that aggregate \$600 or more for any calendar year on one or more qualified education loans is a payee, without regard to the requirement of paragraph (a) of this section that the interest be received in the course of a trade or business.

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

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

(3) *Waiver of penalties for failures to include a correct TIN*—(i) *In general.* In the case of a failure to include a correct TIN on Form 1098-E or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the payee's control, such as a failure of the payor to furnish a correct TIN. However, the payee must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner.* A payee must request the TIN of each payor if it does not already have a record of the payor's correct TIN. If the payee does not have a record of the payor'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 interest. If a payor refuses to provide his or her TIN upon request, the payee must file the return and furnish the statement required by this section without the payor'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 a payee acted in a responsible manner in attempting to obtain a correct TIN. A payee 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 a payor on a return or statement required by section 6050S and this section.

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

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

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

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

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

1. Revising the first sentence of paragraph (b)(1).
2. Revising paragraph (g)(1).
3. Adding paragraph (g)(3).

The revisions and additions read as follows:

§ 301.6011-2 Required use of magnetic media.

* * * * *

(b) *Returns required on magnetic media.* (1) If the use of Forms 1042-S, 1098, 1098-E, 1099 series, 5498, 8027, W-2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. * * *

* * * * *

(g) *Effective dates.* (1) Except as otherwise provided in paragraph (g)(2) or (3) of this section, this section applies to returns required to be filed after December 31, 1986.

* * * * *

(3) This section applies to returns on Form 1098-E required to be filed after December 31, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (b) is amended by removing the entry for “1.6050S-1T”, and adding two new entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6050S-3.....	1545-1678
1.6050S-4T.....	1545-1729
* * * * *	

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved April 8, 2002.

Mark Weinberger,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on April 26, 2002, 8:45 a.m., and published in the issue of the Federal Register for April 29, 2002, 67 F.R. 20901)