

date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice—(i) In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the furnisher has corrected the

statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (b) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(c) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2004.

[T.D. 9114, 69 FR 7570, Feb. 18, 2004]

§ 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 cal-

endar 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 September 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*—(i) *Loans made before September 1, 2004.* For qualified education loans made before September 1, 2004, a payee is not required to report payments of loan origination fees or capitalized interest or to take such payments into account in determining the \$600 amount for purposes of paragraph (a)(1) of this section.

(ii) *Loans made on or after September 1, 2004.* For qualified education loans made on or after September 1, 2004, a payee is required to report payments of interest as described in §1.221-1(f). Under §1.221-1(f), interest includes loan origination fees that represent charges for the use or forbearance of money and capitalized interest. Under this paragraph (e)(1)(ii), a payee shall take such payments of interest into account in determining the \$600 amount for purposes of paragraph (a)(1) of this section. For purposes of this section and

section 6050S, interest (including capitalized interest and loan origination fees) is treated as received, and is reportable, in the year the interest is treated as paid under the allocation rules in §1.221-1(f)(3). See §1.221-1(f) for rules relating to capitalized interest, and §1.221-1(f)(2)(ii) for rules relating to loan origination fees, on qualified education loans.

(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 sec-

tion 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.

[T.D. 8992, 67 FR 20904, Apr. 29, 2002, as amended by T.D. 9125, 69 FR 25499, May 7, 2004]

§ 1.6050S-4 Information reporting for payments of interest on qualified education loans.

(a) *Electronic furnishing of statements—(1) In general.* A person required by section 6050S(d) to furnish a written statement regarding payments of interest on qualified education loans (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent—(i) In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

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

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format.