

## Part III- Administrative, Procedural, and Miscellaneous

### Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest on Qualified Education Loans

Notice 2006-5

#### PURPOSE

This Notice provides information for payees/filers who receive payments of interest on qualified education loans to request a waiver of penalties for failure to report payments of loan origination fees and capitalized interest received in 2005 for qualified education loans made on or after September 1, 2004.

#### BACKGROUND

Section 6050S requires certain payees who receive payments of interest on one or more qualified education loans, as defined in section 221(d)(1), to file information returns with the Internal Revenue Service (Service) and to furnish information statements to borrowers. In the case of interest payments received or collected by a person on behalf of a payee, the information reporting requirements are generally imposed on that other person (filer) and not the payee. See section 1.6050S-3(e)(3)(i) of the Income Tax Regulations. For qualified education loans made on or after September 1, 2004, payees/filers are required to report on Form 1098-E, "Student Loan Interest Statement," payments of interest received on qualified education loans, including payments of loan origination fees and capitalized interest. See section

1.6050S-3(e)(1)(ii) of the regulations, published on May 7, 2004. 67 Fed. Reg. 25,489. A prior version of these regulations, published on April 29, 2002, provided that, for calendar year 2003 returns and later years, payees/filers were not required to report payments of loan origination fees and capitalized interest for qualified education loans made before January 1, 2004. 67 Fed. Reg. 20,901.

After publication of the amended final section 1.6050S-3 regulations on May 7, 2004, the Treasury Department and Service received comments that additional time was required to make the programming changes necessary to comply with the reporting requirements for loan origination fees and capitalized interest under those regulations. In response, the Treasury Department and Service issued Notice 2004-63, 2004-2 C.B. 597, which provides that the Service will not assert penalties under section 6721 or section 6722 for the failure to report on Form 1098-E returns payments attributable to loan origination fees and capitalized interest received in calendar year 2004 on a qualified education loan made on or after September 1, 2004. The Notice explained that the penalty relief was limited to calendar year 2004 returns and would provide payees/filers additional time to make the necessary programming changes to capture information on and report payments of loan origination fees and capitalized interest received in 2005 and future calendar years, consistent with the reporting requirements of the section 6050S regulations.

Some payees/filers have taken steps to comply with the reporting requirements for loan origination fees and capitalized interest for calendar year 2005 returns. However, some commentators have requested additional relief to provide more time to

comply with the reporting requirements for calendar year 2005 returns.

#### REQUEST FOR WAIVER FOR REASONABLE CAUSE

A payee/filer who is not able to comply with the reporting requirements under section 1.6050S-3 for loan origination fees and capitalized interest for calendar year 2005 returns may request that the Service waive, under section 6724 and the regulations thereunder, any penalty that might otherwise be imposed under section 6721 or section 6722 for failure to report these amounts. Section 6724 authorizes the Service to waive the penalties under section 6721 (failure to file correct information returns) or section 6722 (failure to furnish correct payee statements) if the failure was due to reasonable cause and not due to willful neglect. Under section 301.6724-1(a)(2) of the Regulations on Procedure and Administration, a payee/filer may establish reasonable cause if there are significant mitigating factors with respect to the failure, or if the failure arose from events beyond the payee/filer's control. In addition, a payee/filer must show that it acted in a responsible manner both before and after the failure occurred.

A payee/filer seeking a waiver under this Notice should send its request in the text of an e-mail to: [1098ewaiver@irs.gov](mailto:1098ewaiver@irs.gov) on or before the due date of the information returns. The Service will acknowledge receipt of a waiver request under this Notice. The waiver request must include the following information:

- (1) a notation at the top of the request in large letters stating, "Form 1098-E Waiver Request under Notice 2006-5";
- (2) the payee/filer's name, taxpayer identification number, and mailing address;

(3) a statement that describes:

(a) the steps the payee/filer has taken in an attempt to report loan origination fees and capitalized interest, including the date on which the payee/filer first took steps to attempt to implement systems to comply with the reporting requirements and the amount of time and resources devoted to efforts to comply; and

(b) the undue hardship that would result by complying with the obligation to report loan origination fees and capitalized interest, including an indication of the size of the payee/filer's student loan portfolio and the revenue derived from the loan portfolio;

(4) a statement that the payee/filer is in compliance with the Additional Rules set forth in this Notice; and

(5) a statement, made under penalty of perjury, that the information contained in the waiver request is true, correct, and complete to best of the payee/filer's knowledge and belief. The perjury statement must be signed by a person who is authorized to sign federal tax returns on behalf of the payee/filer by entering his or her name and date of birth.

The Service currently anticipates that it will decide, within six months after receipt of a complete request for a waiver, whether to grant a waiver of penalties for failure to report information required by section 6050S and the regulations thereunder based on each payee/filer's particular facts and circumstances as described in the waiver request. For purposes of this Notice, the Service generally will waive penalties if the payee/filer's request demonstrates that: (1) the payee/filer acted in a responsible manner because it took reasonable efforts sufficiently before the due date of the information return to

attempt to implement necessary programming changes to enable the payee/filer to capture information on and report payments of loan origination fees and capitalized interest; and (2) there are significant mitigating factors or the failure arose from events beyond the payee/filer's control, including hardship resulting from incremental costs to the payee/filer.

#### ADDITIONAL RULES

A payee/filer who is not able to comply with the reporting requirements for loan origination fees and capitalized interest received in calendar year 2005 on a qualified education loan made on or after September 1, 2004, and who seeks a penalty waiver under this Notice, must:

(1) file and furnish in a timely manner a Form 1098-E (or other appropriate information statement) that (i) includes the amount of interest (except for any loan origination fees or capitalized interest) received in 2005 in Box 1, (ii) does not include a check mark in Box 2, and (iii) includes all other required information; and

(2) furnish a statement to the borrower indicating that the amount of interest reported in Box 1 of Form 1098-E for calendar year 2005 does not include payments attributable to either loan origination fees or capitalized interest received on qualified education loans made on or after September 1, 2004, and that the borrower may be able to deduct amounts in addition to the amounts reported in Box 1.

Notwithstanding sections 1.163-7(a) and 1.1275-2(a), a borrower who receives a Form 1098-E (or other appropriate information statement) indicating that it does not include payments of loan origination fees may use any reasonable method to allocate

the loan origination fees over the term of the loan for purposes of the deduction allowable under section 221. A method that results in the double deduction of the same portion of a loan origination fee would not be reasonable.

#### PAPERWORK REDUCTION ACT

The collection of information contained in this Notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1996.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this Notice is required in order for a payee/filer to receive a waiver of penalties for failure to report loan origination fees and capitalized interest. The collection of information is required to obtain benefits. The likely respondents are for profit organizations as well as not for profit organizations.

The estimated total annual recordkeeping and reporting burden is 5,000. The estimated annual recordkeeping and reporting burden per respondent is 10 hours. The estimated number of respondents is 500.

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

#### CONTACT INFORMATION

For further information regarding a waiver of penalties, contact Kelli Winegardner (Office of Penalties and Interest Administration) at (202) 283-0454 (not a toll-free call).

For further information regarding this Notice, contact Donna Welch (Office of Associate Chief Counsel (Procedure and Administration)) at (202) 622-4910 (not a toll-free call).