



August 7, 2023

Vivian Hayes
Internal Revenue Service
U.S. Department of Treasury
Room 5203, P.O. Box 7604,
Ben Franklin Station,
Washington, DC 20044.

**RE: Comments on IRS NPRM REG–101607–23
Section 6417 Elective Payments of Applicable Credits under Inflation
Reduction Act**

Dear Ms. Hayes,

On behalf of the American Council on Education (ACE) and the undersigned higher education associations, I write in response to the Notice of Proposed Rulemaking (REG–101607–23) in which the Internal Revenue Service (IRS) of the Department of the Treasury sets out proposed regulations concerning elective payments of applicable credits under Section 6417 of the Internal Revenue Code, as added by Section 13801 of the Inflation Reduction Act of 2022 (IRA) (Pub.L. 117-169). See 88 Fed. Reg. 40528 (June 21, 2023).

Founded in 1918, ACE is the major coordinating body for the nation’s colleges and universities. ACE represents more than 1,700 college and university presidents and the executives at related associations. Together with the undersigned higher education associations, we represent all types of U.S. accredited, degree-granting institutions, public and private.

The proposed regulations clarify that in addition to organizations listed under 501(c)(3), such as private nonprofit colleges and universities, any states, political subdivisions, and their agencies and instrumentalities, including some public universities, are all eligible for elective payments of applicable tax credits under Section 6417. The proposed regulations rightly note that “[i]t would be administratively burdensome, both for stakeholders and for the IRS, to determine what is part of a State, Indian tribal government, U.S. territory, or political subdivision, on the one hand, and what is an agency or instrumentality thereof on the other hand.”¹ Furthermore, as our letter dated Nov. 3, 2022 stated, we believed that Congress intended for public universities designated as “instrumentalities” to be eligible for the elective pay option under the various credits set forth in Section 6417 and that Treasury had the authority to so interpret the statute in its implementing regulations. As a result, we are

¹ See 88 Fed. Reg. 40528, 40533.

extremely pleased and grateful that the Secretary has exercised her authority under the statute to provide such a clarification in the proposed regulations.

As we previously noted in our November 2022 letter, higher education institutions were early leaders in promoting green infrastructure when about 800 institutions signed the American College and University Presidents Climate Commitment between 2007 and 2011. The higher education community will continue its efforts to address climate change on our campuses and beyond. The Secretary's clarifying interpretation of elective payments for the applicable credits under Section 6417 will certainly help to support and incentivize that effort, including among some public universities that may well have been excluded from eligibility.

Thank you for the opportunity to provide comments on the proposed regulations.

Sincerely,



Ted Mitchell
President

On behalf of:

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
National Association of College and University Business Officers
State Higher Education Executive Officers Association