

**DESCRIPTION OF H.R. 8913, THE
“PROTECTING AMERICAN STUDENTS ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on July 9, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for July 9, 2024, of H.R. 8913, the “Protecting American Students Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 8913, the “Protecting American Students Act”* (JCX-28-24), July 5, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Certain Students Not Taken into Account for Purposes of Calculation to Determine if Certain Private Colleges and Universities are Subject to Excise Tax on Net Investment Income; Requirement to Report Certain Information with Respect to Application of Excise Tax Based on Investment Income of Private Colleges and Universities

Present Law

In general

Section 4968 imposes an excise tax on an applicable educational institution for each taxable year equal to 1.4 percent of the net investment income of the institution for the taxable year. Net investment income is determined using rules similar to the rules of section 4940(c) (relating to the net investment income of a private foundation).

An applicable educational institution is an eligible education institution (as defined in section 25A):² (1) that has at least 500 tuition-paying students during the preceding taxable year; (2) more than 50 percent of the tuition-paying students of which are located in the United States; (3) that is not described in the first sentence of section 511(a)(2)(B) of the Code (generally describing State colleges and universities); and (4) the aggregate fair market value of the assets of which at the end of the preceding taxable year (other than those assets that are used directly in carrying out the institution's exempt purpose)³ is at least \$500,000 per student (the "asset-per-student threshold"). For these purposes, the number of students of an institution is based on the average daily number of full-time students attending the institution, with part-time students being taken into account on a full-time student equivalent basis.

For purposes of determining whether an educational institution meets the asset-per-student threshold⁴ and for purposes of determining net investment income, assets and net investment income of a related organization with respect to the educational institution are treated as assets and net investment income, respectively, of the educational institution, except that:

- No such amount is taken into account with respect to more than one educational institution; and
- Unless the related organization is controlled by the educational institution or is a supporting organization (described in section 509(a)(3)) with respect to the institution for the taxable year, assets and net investment income that are not intended or available for the use or benefit of the educational institution are not taken into

² Section 25A(f)(2) defines an eligible educational institution as an institution that (1) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. sec. 1088), as in effect on August 5, 1997, and (2) is eligible to participate in a program under title IV of such Act.

³ Assets used directly in carrying out the institution's exempt purpose include, for example, classroom buildings and physical facilities used for educational activities and office equipment or other administrative assets used by employees of the institution in carrying out exempt activities, among other assets.

⁴ In cross-referencing the asset-per-student threshold for this purpose, section 4968(d)(1) includes a reference to subsection "(b)(1)(C)" that should instead read "(b)(1)(D)." A clerical correction may be necessary to correct this cross-reference.

account. For example, assets of a related organization that are earmarked or restricted for (or fairly attributable to) the educational institution would be treated as assets of the educational institution, whereas assets of a related organization that are held for unrelated purposes (and are not fairly attributable to the educational institution) would be disregarded.

An organization is treated as related to the institution for this purpose if the organization: (1) controls, or is controlled by, the institution; (2) is controlled by one or more persons that control the institution; or (3) is a supported organization⁵ or a supporting organization⁶ during the taxable year with respect to the institution.

It is intended that the Secretary of the Treasury promulgate regulations to carry out the intent of the provision, including regulations that describe: (1) assets that are used directly in carrying out the educational institution's exempt purpose; (2) the computation of net investment income; and (3) assets that are intended or available for the use or benefit of the educational institution.

The Internal Revenue Service (the "IRS") and Treasury Department have issued regulations addressing this provision.⁷

Reporting requirements

A private college or university generally must file an annual information return with the IRS using IRS Form 990, "Return of Organization Exempt from Income Tax." Part V, question 16 of the Form 990 for the year 2023 asks whether the filing organization is an educational institution that is subject to the section 4968 excise tax on net investment income. The instructions to the form include a worksheet to assist the organization in making this determination.⁸

An organization that answers "yes" to question 16 is required to complete Schedule O of IRS Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code." Form 4720 is used to report certain excise taxes that apply to tax-exempt organizations, including the section 4968 excise tax on the net investment income of private colleges and universities. On Schedule O, the organization must provide information about the net investment income of the filing organization and its related organizations and compute the amount of section 4968 excise tax owed by the organization.

⁵ Sec. 509(f)(3).

⁶ Sec. 509(a)(3).

⁷ Treas. Reg. sec. 53.4968-1 through -4.

⁸ See 2023 Instructions for Form 990, pp. 18-19. The student counts used in determining whether an institution is an applicable educational institution are referenced in the worksheet but are not provided to the IRS.

Description of Proposal

The proposal modifies the asset-per-student calculation used in determining whether an institution is an applicable educational institution. Specifically, a student is not taken into account with respect to an educational institution for this purpose unless the student meets the eligibility requirements under section 484(a)(5) of the Higher Education Act of 1965.⁹ That section requires that the student “be a citizen or national of the United States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.”

The proposal also requires an applicable educational institution that is required to file an annual information return (Form 990) to include on the return the number of students taken into account for purposes of the asset-per-student calculation, determined both before and after application of the rule that limits the student count to students who meet the eligibility requirements under section 484(a)(5) of the Higher Education Act of 1965.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2024.

⁹ 20 U.S.C. sec. 1091(a)(5).

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to have the following effect on Federal fiscal year budget receipts. Because the first tax year following the effective date for most applicable educational institutions begins July 1, 2025, and ends on June 30, 2026, changes to excise tax receipts under section 4968 resulting from this proposal generally will not occur until such institutions file the Form 990 and Form 4270 returns for such tax year. In general, not including extensions, these returns have a filing deadline of the 15th day of the fifth month after the institution’s accounting period ends. For this reason, the proposal is not expected to have significant revenue effects relative to the present law baseline until Federal fiscal year 2027.

For purposes of the estimate, we have assumed an enactment date of July 31, 2024. The proposal is estimated to have the following effect on Federal fiscal year budget receipts:

Fiscal Years												
[Millions of Dollars]												
<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>2033</u>	<u>2034</u>	<u>2024-28</u>	<u>2024-34</u>
--	--	[1]	26	28	30	33	35	37	40	43	55	273

NOTE: Details may not add to totals due to rounding.

[1] Gain of less than \$500,000.