

**DESCRIPTION OF H.R. 8914, THE
“UNIVERSITY ACCOUNTABILITY ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
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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. 8914, the “University Accountability 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. 8914, the “University Accountability Act”* (JCX-27-24), 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. Penalties with Respect to Civil Rights Violations by Certain Tax-Exempt Educational Institutions

Present Law

Section 501(c) tax-exempt organizations

Section 501(c) describes 28 different categories of organizations that generally are exempt from Federal income tax.² Section 501(c)(3) provides tax-exempt status to certain nonprofit entities organized and operated exclusively for charitable, religious, educational, or certain other purposes, provided that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual. Organizations described in section 501(c)(3), which generally are referred to as “charities,” are classified as either public charities or private foundations.³ In addition to the tax-exempt status conferred on organizations described in section 501(c)(3), charitable contributions to such organizations are tax-deductible to the donor for Federal income, estate, and gift tax purposes.⁴ In addition, section 501(c)(3) organizations are eligible for certain tax-exempt financing benefits.⁵

Tax exemption for educational organizations

The term “charitable” includes, for purposes of section 501(c)(3), the advancement of education or science.⁶ The term “educational,” as used in section 501(c)(3), relates to the instruction or training of individuals for the purpose of improving or developing their

² Sec. 501(c)(1) through (19) and (21) through (29). These “tax-exempt organizations” generally are exempt from Federal income tax on income derived from activities substantially related to their exempt purposes and on their investment income. Such organizations generally are subject to tax (unrelated business income tax, or “UBIT”) on any income derived from business activities that are regularly carried on and not substantially related to their exempt purposes. Secs. 511-514.

³ Sec. 509(a). Private foundations are defined under section 509(a) as all organizations described in section 501(c)(3) other than the organizations granted public charity status by reason of: (1) being a specific type of organization (*i.e.*, churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; (3) providing support to another section 501(c)(3) entity that is not a private foundation (*i.e.*, being a “supporting organization”); or (4) being organized and operated exclusively for testing for public safety. In contrast to public charities, private foundations generally are funded from one or a limited number of sources (an individual, family, or corporation) and are subject to restrictions not applicable to public charities. In general, more generous charitable contribution deduction rules apply to gifts to public charities.

⁴ See secs. 170, 642(c), 2055(a)(2), 2106(a)(2)(A)(ii), and 2522(a)(2). Organizations described in section 501(c)(3) generally are eligible for reduced postal rates and, depending on the applicable State and local laws, may also be eligible for State and local income, property, and sales tax benefits.

⁵ See sec. 145.

⁶ Treas. Reg. sec. 1.501(c)(3)-1(d)(2).

capabilities, or the instruction of the public on subjects useful to individuals and beneficial to the community.⁷

The following types of organizations may qualify as educational within section 501(c)(3): (1) an organization, such as a primary or secondary school, a college or university, or a professional or trade school, that has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body in attendance at a place where the educational activities are regularly carried on; (2) an organization whose activities consist of conducting public discussion groups, forums, panels, lectures, or other similar programs; (3) an organization that presents a course of instruction by correspondence or through the use of television or radio; (4) a museum, zoo, planetarium, symphony orchestra, or other similar organization; and (5) a nonprofit children's day care center.⁸ In addition, college athletic organizations that promote certain aspects of athletic competition have generally been held to be educational and, thus, exempt under section 501(c)(3). The exemption is based on the principle that an athletic program conducted for the physical development and betterment of the students is an integral part of a university's overall educational activities.

Civil tax penalties

The Code provides for both civil and criminal penalties to ensure complete and accurate reporting of tax liability and to discourage fraudulent attempts to defeat or evade tax. Civil and criminal penalties are applied separately. Thus, a taxpayer convicted of a criminal tax offense may be subject to both criminal and civil penalties, and a taxpayer acquitted of a criminal tax offense may nonetheless be subject to civil tax penalties. In cases involving both criminal and civil penalties, the IRS generally does not pursue both simultaneously, but delays pursuit of civil penalties until the criminal proceedings have concluded.

The majority of delinquent taxes and penalties are collected through the civil process. In determining whether a penalty applies along with an adjustment to a tax return, the examining agent is constrained not only by the applicable statutory provisions, but also by the written policy of the IRS not to treat penalties as bargaining points but instead to develop facts sufficient to support the decision to assert or not to assert a penalty.⁹ The goal is to ensure consistency, fairness, and predictability in administration of penalties.

Civil penalties are provided in Chapter 68 of the Code (sections 6651 to 6751). Some penalties are calculated by reference to the tax liability, such as the penalty for fraud, while others are fixed dollar amounts or fixed percentages, such as the failure to file a tax return or to pay tax. In general, there is a penalty for (i) fraud;¹⁰ (ii) failure to pay or file (referred to as

⁷ Treas. Reg. sec. 1.501(c)(3)-1(d)(3).

⁸ *Ibid.*

⁹ Policy Statement 20-1, Internal Revenue Manual, sec. 1.2.20.1.1.

¹⁰ Section 6663(a) applies a penalty of 75 percent on any amount of an underpayment attributable to fraud. Fraud differs from negligence in that fraud requires an intent to evade taxes.

delinquency penalties);¹¹ (iii) failure to pay estimated tax;¹² (iv) failure to deposit estimated tax amounts;¹³ (v) negligence, substantial understatement, substantial valuation misstatements, substantial overstatement of pension liabilities, substantial estate or gift tax valuation understatement, lack of economic substance, undisclosed foreign financial asset understatements, and understatements with respect to reportable transactions (all of the items in this list are referred to as accuracy related penalties);¹⁴ (vi) not filing or filing incorrect information returns;¹⁵ and (vii) aiding and abetting understatements, taking unreasonable return positions (applied to return preparers), promoting abusive tax shelters, and failing to furnish information regarding tax shelters (referred to collectively as the preparer, promoter, and protestor penalties).¹⁶

These penalties are categorized into two types: additions to the tax and additional amounts (herein “additions to tax”), and assessable penalties. The additions to tax penalties are generally subject to deficiency proceedings and include delinquency penalties (section 6651), failure by individuals to pay estimated income tax (section 6654), failure by corporations to pay estimated income tax (section 6655), failure to make deposit of taxes (section 6656), accuracy-related penalties (sections 6662 and 6662A), and the fraud penalty (section 6663). Some of these penalties may be waived under certain circumstances, including a showing of reasonable cause under section 6664.

¹¹ Section 6651(a) applies the delinquency penalties. Failing to pay the amount shown as tax will result in a 0.5 percent monthly penalty on the net amount due, increasing to 1 percent monthly in the first month starting after the IRS gives notice and demand for immediate payment. The maximum aggregate penalty is 25 percent. Failing to file a return results in a penalty of 5 percent per month on the tax required to be shown on the return, up to a maximum aggregate penalty of 25 percent.

¹² Section 6654 provides for additions to tax for underpayment of estimated tax for individuals. Section 6655 provides for the additions to tax for underpayment of estimated tax for corporations. In both cases, the additions to tax are computed by applying the underpayment rate under section 6621 to the amount of the underpayment, for the period of the underpayment. Section 6621 applies an interest rate of the federal short-term interest rate plus 3 percent.

¹³ Section 6656(a) applies a penalty for failure to deposit of 2 percent if the failure to deposit is 5 days or less, 5 percent if the failure is greater than 5 days but not more than 15 days, and 10 percent if the failure is more than 15 days.

¹⁴ Section 6662 applies a 20 percent penalty to any part of an underpayment attributable to accuracy related errors as listed in section 6662(b). This penalty increases to 40 percent in certain circumstances.

¹⁵ Section 6721 applies a \$250 penalty for failure to file a correct information return, up to a maximum of \$3 million per year. These amounts are adjusted annually to account for inflation. For a failure relating to a return required to be filed in 2025 (*i.e.*, a 2024 return), the penalty amount is \$330, up to a maximum of \$3,987,000 per year. Rev. Proc. 2023-48, 2023-48 I.R.B. 1287, November 27, 2023. No penalty is imposed if the failure is due to reasonable cause.

¹⁶ Section 6701 applies a penalty of \$1,000 on any person who aids in the understatement of tax liability for individuals and \$10,000 on any person who aids in the understatement of tax liability for a corporation. Section 6700 applies a penalty of \$1,000 against anyone involved directly or indirectly in the sale of an abusive tax shelter. These are not currently adjusted for inflation.

Assessable penalties can be assessed without restrictions (such as the opportunity for preassessment judicial review) applicable in deficiency cases. These penalties are imposed for failure to pay over collected taxes and to file information returns reporting specified information and transactions (section 6671 through 6720C), for failure to comply with certain information reporting requirements, such as failure to file correct information returns (section 6721), failure to furnish correct payee statements (section 6722), and failure to comply with other information reporting requirements (sections 6723 and 6725). These penalties may also be waived under certain circumstances, including a showing of reasonable cause under section 6724.

Description of Proposal

Penalty for civil rights violation

The proposal imposes an assessable penalty on a “specified tax-exempt educational institution” with respect to each determination of civil rights violation with respect to the institution. The penalty is equal to the applicable penalty amount, as described below.

For purposes of the proposal, a “specified tax-exempt educational institution” is an eligible educational institution as defined in section 25A(f)(2)¹⁷ that is described in section 501(c) (describing certain organizations exempt from Federal income tax) or section 511(a)(2)(B) (generally describing State colleges and universities).

A determination of civil rights violation means, with respect to a specified tax-exempt educational institution, any civil judgment of a Federal court of competent jurisdiction that the institution violated any provision of title VI of the Civil Rights Act of 1964. Title VI generally prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. If the Secretary of the Treasury (the “Secretary”) determines that two or more judgments are based on the same set of facts and circumstances, such judgments shall be treated as a single determination of civil rights violation for purposes of the penalty, the mandatory review of tax-exempt status (discussed below), and such portions of the reporting requirements (also discussed below) as the Secretary determines appropriate.

The term “applicable penalty amount” means, with respect to each determination of civil rights violation made with respect to a specified tax-exempt educational institution, the greater of (1) \$100,000, or (2) in the case of an institution that is required to file a Form 990-series return under section 6033(a), five percent of the aggregate administrative compensation paid by the institution during the taxable year in which the violation occurred. Thus, the applicable penalty amount is \$100,000 in the case of a State college or university that is not, under present law, required to file a Form 990-series return. Administrative compensation means, with respect to a specified tax-exempt educational institution, the compensation and other payments described in section 6033(b)(7) made by the institution. Section 6033(b)(7) generally describes compensation and other payments made during the year by a section 501(c)(3) organization to individuals who

¹⁷ 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, 1977, and (2) is eligible to participate in a program under title IV of such Act.

are foundation managers (within the meaning of section 4946(b)(1)¹⁸) or highly compensated employees.

A specified tax-exempt educational institution is liable for the penalty with respect to any determination of civil rights violation on the date of the judgment referred to above. In the event such a determination is vacated, overturned, or otherwise reversed, the Secretary shall refund any penalty paid with respect to the determination. This requirement to refund the penalty, however, does not prevent the imposition of a penalty with respect to any determination of civil rights violation that is reinstated or otherwise redetermined following a reversal.

Under the proposal, the limitations periods for timely assessment and collections under section 6501 and limitations periods for claiming refunds under section 6511 are inapplicable to the penalties and refund thereof.

Mandatory review of tax-exempt status upon third determination of a violation

Upon the determination of civil rights violation with respect to a specified tax-exempt educational institution, if it is not one of the first two such determinations made after the date of enactment, the Secretary shall conduct a review to determine whether the institution remains an organization that is described in section 501(c) and entitled to exemption from Federal income tax under section 501(a). For this purpose, any determination of civil rights violation that is vacated, overturned, or otherwise reversed is not taken into account, unless subsequently reinstated or otherwise redetermined.

Reporting requirements

The proposal requires a specified tax-exempt educational institution that is subject to the annual information return reporting requirements of section 6033(a) for the taxable year (that is, an organization that is required under present law to file a Form 990-series return) to include on the return the following information with respect to each determination of civil rights violation with respect to the institution:

1. a description of the determination (including the date of the determination) and of the civil rights violation to which the determination relates;
2. the number of determinations of civil rights violation made with respect to the institution after the date of enactment and before such determination (disregarding determinations that are vacated, overturned, or otherwise reversed, unless subsequently reinstated or otherwise redetermined); and
3. such other information as the Secretary may require.

¹⁸ Section 4946(b)(1) defines the term “foundation manager” to include an officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) and with respect to any act (or failure to act) the employees having the authority or responsibility with respect to such act (or failure to act).

For each determination of civil rights violation that is vacated, overturned, or otherwise reversed during the taxable year, such institution must include the following information on its annual information return:

1. a description of the order or judgment that reversed the determination, including the date of the order or judgment;
2. a description of the determination so reversed (including the date of the determination) and of the civil rights violation to which the determination relates; and
3. such other information as the Secretary may require.

Certain State colleges or universities may not, under present law, be required to file a Form 990-series annual information return under section 6033(a). Under the proposal, however, a specified tax-exempt educational institution that is described in section 511(a)(2)(B) (generally describing State colleges and universities) shall, for any taxable year in which there is a determination of civil rights violation (or reversal thereof) with respect to the institution, file an annual return that contains the above-described information relating to reporting of determinations and reversals. The penalties applicable to Form 990-series returns filed under section 6033(a) (such as the failure-to-file penalty under section 6652(c)) shall also apply to such a return.

Effective Date

The proposal is effective for determinations of civil rights violation made after the date of enactment.

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to increase Federal fiscal year budget receipts over the 2024-2034 budget period by less than \$500,000.