June 14, 2021

The Honorable Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Ron Wyden
Chairman
Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Committee on Finance
U.S. Senate
Washington, DC 20510

RE: Higher Education Tax Proposals to Support Students and Institutions in the American Jobs and American Families Plans Legislation

Dear Chairman Neal, Ranking Member Brady, Chairman Wyden, and Ranking Member Crapo:

On behalf of the American Council on Education and the undersigned higher education associations, I am writing today to urge you to include the tax proposals set out below in any legislation that incorporates the American Jobs and American Families plans. Each of the proposals would support students and their families, as well as institutions of higher education, as they rebuild and move forward beyond the COVID-19 crisis.

Like other sectors of our society, the pandemic has had a crippling impact on students and their families, who have had to cope with lost jobs, reduced wages, and in some cases, significant health challenges from COVID-19, which has disproportionately affected low-income students and communities of color. In the face of these challenges, some students have been forced to suspend their pursuit of a college education. This was particularly true of students at community colleges, which saw an estimated 10 percent decline in enrollment last fall. Since the onset of the pandemic, colleges and universities—public and private, small and large, urban and rural—have seen precipitous declines in revenues and soaring new expenses, and over 650,000 jobs were lost on campuses, roughly one of every eight positions.

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The higher education community is enormously grateful for the significant resources provided since the spring of 2020 in the form of emergency aid relief benefiting millions of students and support for institutions, particularly the additional dedicated funding for Historically Black Colleges and Universities and other minority serving institutions to address the disproportionate effect of the pandemic on those institutions and their students. And yet significant challenges remain for the coming academic year and beyond, including billions of dollars of unmet needs for students and institutions, which the following proposals can help to address.

- **Repeal the taxability of scholarship and grant aid, including for Pell Grants.**

Since 1986, scholarships and grant aid used on non-tuition expenses like room and board have been taxed as a form of unearned income. Repealing the taxability of scholarship and grant aid would permit low- and middle-income students to retain more of this aid. The impact of taxability of scholarship and grant aid has grown over the past 35 years as the cost of non-tuition higher education expenses has risen so that now approximately 3 million students receive aid that is subject to taxation.[1] According to the College Board, in the 2020-21 academic year, taxable higher education expenses make up 71.8 percent for two-year institutions, 56 percent for four-year public institutions, and 29 percent for private, four-year nonprofit institutions.[2]

Moreover, in addition to potential taxation, Pell students—our lowest-income students—attending the lowest cost institutions receive little or no benefit of the American Opportunity Tax Credit (AOTC), which contains a grant/scholarship offset provision that has the unintended effect of sharply limiting or eliminating the benefit for these students. Based on data from the Department of Education, we estimate that approximately 725,000 students are adversely affected by this issue each academic year.

We urge Congress to repeal the taxability of scholarship/grand aid, and to specifically address the Pell-AOTC interaction issue, which is harming our lowest income students and the lowest cost schools.

- **Enhance tax-exempt financing and expand the Section 179D energy-efficient construction tax deduction.**

Colleges and universities will need multiple tools to respond to student and institutional needs as a result of the COVID-19 virus. Protecting and enhancing access to low cost financing can strategically help institutions make other scarce resources available, which can be achieved by using an array of public finance tools. In addition, proven or new capital financing options can be used to support research infrastructure, bolstering our nation's innovation capacities.

[1] https://nces.ed.gov/datalab/index.aspx.
[2] https://research.collegeboard.org/pdf/trends-college-pricing-student-aid-2020.pdf, p. 11.

- **Reinstate the advance refunding of tax-exempt bonds.**

The advance refunding of tax-exempt bonds was eliminated in 2017 by the Tax Cuts and Jobs Act (TCJA). For colleges and universities, advance refunding played a significant role in helping minimize debt service costs by expanding access to lower interest rates. While this would potentially help all institutions, it may be particularly helpful to teaching hospitals.

- **Expand debt issuance with a Direct Pay Bonds Program.**

Restoring and expanding the use of direct pay bonds, including expanding eligibility to include private 501(c)(3) colleges and universities, would immediately create an important debt financing option for campuses across the country still reeling from the COVID-19 crisis.

- **Modernize restrictions imposed by tax-exempt bond financing.**

The current "private business use test" (IRC Sec. 141(b)) for tax-exempt bond financing limits how much bond-financed facilities may be used for private purposes. This restriction applies throughout the terms of the bonds. Among the many activities that might be deemed private business use are the sale or lease of university property; sponsored research; technology transfer and licensing agreements; clinical trial agreements; and joint ventures. Raising the five-percent cap on private business use would permit greater use of existing university research infrastructure at no cost to the federal government and foster more university-industry partnerships in ways that would advance the nation's innovation capacity and economic activity.

- **Expand the Section 179D energy-efficient construction tax deduction.**

The energy-efficient construction tax deduction (Sec. 179D) incentivizes public campuses to utilize energy efficient upgrades to retrofit existing buildings and for new construction projects, generating environmentally important energy savings. Eligibility for the deduction should be expanded to include private nonprofit institutions, and the maximum deduction should be increased from $1.80 to $3 per square foot.

- **Enhance higher education tax credits.**

The COVID-19 pandemic has profoundly and adversely affected traditional and nontraditional students, particularly those coming from low- and middle-income backgrounds. Just as Congress provided supplemental student grants in COVID-19 relief legislation, the AOTC and the Lifetime Learning Credit (LLC) should be changed to provide greater support for these students as they struggle to regain their financial footing and continue pursuing their education. The AOTC is focused on undergraduate students, while an expanded LLC would be particularly useful to students enrolling in courses to upgrade their skills and better integrate into the changed economy.

It is well known that these credits are overly complicated and difficult for taxpayers to correctly use. As a result, we have long supported legislative efforts to consolidate and simplify these tax incentives to maximize their impact and enhance access to higher education. A consolidated credit could simplify the higher education tax benefits while retaining the positive aspects of the present credits to better serve both traditional and nontraditional low- and middle-income students, helping them attain an associates, bachelor's, or graduate degree as well as pursue post-baccalaureate education or lifelong learning to enhance skills that employers and our economy need.

As an alternative to comprehensive reform and consolidation of the AOTC and the LLC, we propose the following incremental changes that can enhance these credits to provide more effective assistance for students:

- **AOTC**
  - Increase credit per year from $2,500 to $3,000
  - Increase refundability from 40 percent to 60 percent

- **LLC**
  - Currently, LLC covers 20 percent of up to $10,000 of annual eligible expenses, for a maximum credit of $2,000. Modify credit to cover 100 percent of the first $2,000 of AOTC-eligible expenses.

- **Enhance charitable giving.**

We are grateful for the temporary universal charitable deduction originally enacted last year and extended through 2021, which makes it possible for non-itemizers to claim a limited deduction for charitable giving ($300 per individual/$600 per couple). However, as nonprofits—including colleges and universities—work to rebuild following the historic challenges brought on by COVID-19, the need to enhance private charitable support for their critical work is even more evident. Colleges and universities use charitable gifts to support student financial aid, teaching, research, and their public service missions. This is why we strongly support legislative efforts to expand the universal charitable deduction, in particular the "Universal Giving Pandemic Response and Recovery Act" (S. 618/H.R. 1704), which would provide a much more robust charitable incentive for non-itemizers ($4,000 for individuals/$8,000 for joint filers) and make other needed changes to enhance giving.

- **Repeal the private nonprofit institutional investment income excise tax (the endowment tax).**

The net investment income tax levied on certain private colleges and universities as part of the TJCA is unprecedented and damaging to the teaching and research mission of the affected institutions. This tax takes money directly away from teaching, research, student financial aid and support services, and countless other mission-focused activities. Importantly, it also impedes institutional efforts to further expand generous financial aid offerings for students and support excellence. It should be repealed.

- **Expand and modernize employer provided education assistance (Section 127).**

First enacted in 1978, Sec. 127 of the IRC permits employers to offer employees up to $5,250 in annual tax-free tuition assistance. As part of COVID-19 relief legislation last year, the provision was modified through 2025 to permit employers to also provide to their employees or lender(s) up to $5,250 tax-free annually toward the principal or interest on any qualified education loan incurred by an employee. While this represents an important first step toward the modernization of employer-provide education assistance, there are significant other changes to Sec. 127 that are necessary to more fully support the enhancement of employee skills and access to higher education, including:

  - Unchanged for 35 years, the exclusion amount of Sec. 127 benefits should be significantly increased and indexed for inflation;
  - the expansion to include student loan repayment should be made permanent;
  - eligible educational expenses should be expanded to cover a broader range of education-related equipment necessary for upskilling in the current economy;
  - the provision should be expanded to cover an employee's partner and dependents; and,
  - the benefit should be made available to gig workers.

- **Enact Lifelong Learning and Training Accounts (LLTAs):**

In today's economy, employees can expect to have multiple jobs in different occupations and different sectors of the economy. Indeed, it is now common for work to be more independent, short-term, and project-based, while new technologies create the risk that some jobs will become obsolete. As a result, employees will need to update their skills as well as acquire new skills as the needs of the workplace evolve. One potential new tool to assist employees in this process are worker-controlled, tax-advantaged Lifelong Learning and Training Accounts, funded by workers, employers, and the government, which could be used by workers at any time during their careers to pay for education and training. Because these accounts would belong to workers, they would be portable from job to job, and the decision on how to use the accounts would be made by workers, not employers. Congress should provide low- and middle-income workers and/or their employers an opportunity to make tax-free contributions up to a specified amount each year, potentially with some specified federal match, into the employee's LLTA.

- **Repeal the Unrelated Business Income Tax (UBIT) "basketing" provision.**

Enacted as part of TCJA, the so-called "basketing" rules require that all losses and gains be calculated by activity rather than in the aggregate for determining Unrelated Business Income Tax, a requirement not applicable in corporate taxation. Colleges and universities should pay taxes on unrelated business activities not related to their educational, research, and community service missions. However, imposition of the basketing requirement singles out the nonprofit community, including higher education institutions, by imposing an extra layer of administratively cumbersome tax accounting rules that do not apply to any other sector or industry. We urge that the UBIT basketing rules be repealed.

We strongly urge Congress to include these tax proposals to support students and institutions in any legislation which includes the American Jobs and American Families plans.

Sincerely,

Ted Mitchell
President

On behalf of:

Achieving the Dream
American Association of Colleges for Teacher Education
American Association of Community Colleges
American Association of State Colleges and Universities
American College Personnel Association
American Council on Education
American Indian Higher Education Consortium
APPA, "Leadership in Educational Facilities"
Association of American Colleges and Universities
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Independent California Colleges and Universities
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Advancement and Support of Education
Council of Independent Colleges
EDUCAUSE
Higher Education Consultants Association
Hispanic Association of Colleges and Universities
Independent Colleges of Indiana
Independent Colleges of Washington
Maryland Independent College and University Association
NACUBO
National Association for College Admission Counseling

National Association of College Stores
National Association of Colleges and Employers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
SACSCOC
State Higher Education Executive Officers Association
Tennessee Independent Colleges and Universities
Wisconsin Association of Independent Colleges and Universities