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November 14, 2017

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Re: Higher Education Provisions in the Senate Version of H.R. 1, the *Tax Cuts and Jobs Act*

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the American Council on Education and the undersigned higher education associations, we write today concerning the Senate version of H.R. 1, the *Tax Cuts and Jobs Act*.

We are pleased that the Senate bill retains the student benefits the House tax bill eliminates. However, we are deeply concerned about provisions in this bill that would negatively impact students and undermine institutions by reducing charitable giving, creating an unprecedented tax on private colleges and universities, increasing costs and the regulatory burden on many colleges and universities, reducing the ability to access tax-exempt bonds for capital projects, and threatening state investment in higher education.

In short, the Senate bill will make college more expensive and erode the financial stability of public and private, two-year and four-year colleges and universities. It is possible to offer tax relief in a way that does not increase college costs and does not make a quality higher education less accessible. We are eager to work with Congress to enact such legislation.

The Senate bill contains provisions that will negatively affect colleges and universities, our students, and their families. Our main objections to the bill are listed below, in the order in which they appear in the legislation. The order is not meant to reflect prioritization:

- Increase in the standard deduction and loss of charitable deduction;
- Repeal of the deduction for personal exemptions, including college-age dependents;
- Repeal of state and local tax (SALT) deduction;
- Repeal of advance refunding bonds;
- Creation of a new excise tax on endowments at certain private colleges and universities; and
- Changes to Unrelated Business Income (UBIT).

Title I—Tax Reform for Individuals

Subtitle A—Simplification and Reform of Rates, Standard Deduction, and Exemptions

Increase in the standard deduction

Colleges and universities are concerned that doubling the standard deduction for individuals and couples will reduce the number of taxpayers who itemize, significantly reducing the value of the charitable deduction and leading to a drop in donations to all nonprofits, including colleges and universities. While the Senate bill preserves a modest charitable giving incentive, its value would be significantly curtailed and charitable giving would be reduced to all nonprofits, which provide essential services to all Americans. The Joint Committee on Taxation found that 41 million donors would give about $241.1 billion in 2018 under current law, as opposed to 9 million donors and roughly $146.3 billion under the House bill. That would be a $95 billion—or 40 percent—drop in the use of the charitable deduction under the legislation. We are disappointed that the bill did not include a proposal that would expand the charitable deduction to non-itemizers, like the universal charitable deduction.

Repeal of the deduction for personal exemptions

In addition, the Senate bill eliminates the ability of taxpayers to claim a deduction for college-age dependents. Under current law, taxpayers may claim a deduction ($4,050 in 2017) from income for each dependent. Dependents are typically the taxpayer's children who are 18 years old or younger. A taxpayer's dependent children age 19 to 23 who are full-time college students also qualify for this deduction. The Senate bill repeals the deduction for personal exemptions.

Subtitle D—Simplification and Reform of Deductions

Repeal of deduction for certain taxes not paid or accrual in a trade of business

This provision goes much further than the House provision, completely repealing the state and local tax (SALT) deduction. This will ultimately have a severe and significant negative effect on state budgets, forcing state governments to make very difficult and harmful funding decisions. The SALT deduction helps state and local governments fund public services that provide widely shared benefits. Repealing the benefit will almost certainly make it harder for states and localities—many of which already face serious budget strains—to raise sufficient revenues in the coming years to fund higher education and other priorities. There has been a long-term decline in state support for higher education and cuts to SALT will exacerbate this problem. Cuts in state support for higher education can lead to increased tuition and potentially cuts to state student financial aid programs, raising the cost of attending college for students and their families. History has shown that when states need to make cuts, support for higher education is often a primary target.

Title III—Business Tax Reform

Subtitle G—Banks and Financial Instruments

Repeal of advance refunding bonds

We believe it is a positive step that the Senate bill does not follow the House bill in eliminating private activity bonds. However, we are deeply concerned that both bills would eliminate advance refunding bonds, an important financing tool for institutions—public and private—to refinance outstanding debt at lower interest rates and generate significant interest savings over decades, lowering costs for capital projects such as dorms, classrooms, and research facilities.

Title L—Tax-Exempt Organizations

Excise tax based on investment income of private colleges and universities

Like its House counterpart, this bill fundamentally changes the way nonprofits are treated by creating a new and unprecedented tax on endowments of private colleges and universities. This provision undermines the very nature of the tax-exempt status of private colleges and universities. While the new excise tax is currently focused on certain private institutions, we strongly oppose this new excise tax and the precedent it sets for all of higher education.

Investment income from endowments is used every day to support nearly every aspect of an institution's operations, including all the components vital to its mission and the delivery of a high-quality, affordable education, from financial aid to research and student retention and success programs. An endowment is not a single entity that can be used for any purpose. Rather, it is a permanent investment fund consisting of thousands of separate accounts designed for the needs of the present and the future. Under this bill, potentially large amounts of endowment dollars would be redirected to the federal government, taking them away from providing scholarships to our students and supporting research and education. It also would effectively be a tax on donors' contributions and shift money from the dedicated purpose for the donation. We strongly object to this fundamentally flawed proposal.

Taxes on Unrelated Business Income (UBIT)

The bill contains several proposals that would increase UBIT owed by many colleges and universities including: treating name and logo royalties as unrelated business taxable income and computing unrelated business taxable income separately for each trade or business in a so-called "basketing" fashion. First, name and logo licensing income typically goes directly to funding student aid and academic services, so taxing this income will reduce the amount available for these purposes. Second, the "basketing" proposal requires all losses and gains to be calculated by activity rather than in the aggregate, an approach not found in corporate taxation.

Creating this new accounting method would complicate the tax code rather than simplify it and magnify the harmful impact not only of the new name and logo royalty provision, but also of existing UBIT provisions. While colleges and universities should pay taxes on unrelated business activities not related to their educational, research, and community service missions, they should not be held to special standards that result in a higher tax burden that is not imposed on any other sector or industry. It is also important to understand that changes to UBIT will have a negative downstream effect on the economies of communities in which colleges and universities are situated—for example, if universities cannot afford to pay more tax on income derived from renting out university arenas for concerts, conventions, and the like, they will stop leasing out those facilities, resulting in reduced revenues for local hotels, restaurants, gas stations, and so forth.

In conclusion, the Senate bill preserves a range of important tax benefits that help students and families finance higher education. However, the Senate bill as introduced still contains a number of provisions that would make postsecondary education less accessible to middle- and lower-income Americans and undermine the financial stability of colleges and universities. For these reasons, we cannot support the Senate version of H.R. 1 and strongly oppose the proposed provisions outlined above.

Sincerely,

Ted Mitchell
President

On behalf of:
American Association of Colleges for Teacher Education
American Association of Colleges of Osteopathic Medicine
American Association of Collegiate Registrars and Admission Officers
American Association of Community Colleges
American Association of State Colleges and Universities (AASCU)
American Association of University Professors
American College Health Association
American Council on Education
American Dental Education Association
American Indian Higher Education Consortium
American Psychological Association
APPA, "Leadership in Educational Facilities"
Association of American Colleges and Universities
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Association of Teacher Educators

College and University Professional Association for Human Resources
Consortium of Universities of the Washington Metropolitan Area
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
Council on Governmental Relations
Council on Social Work Education
EDUCAUSE
Hispanic Association of Colleges and Universities
NAFSA: Association of International Educators
NASPA- Student Affairs Administrators in Higher Education
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Collegiate Athletic Association
Society for College and University Planning
The Common Application
The Council for Adult and Experiential Learning
Thurgood Marshall College Fund
UNCF (United Negro College Fund)
UPCEA