116TH CONGRESS
1ST SESSION

S.

To amend the Internal Revenue Code of 1986 to establish tax credits to encourage individual and corporate taxpayers to contribute to scholarships for students through eligible scholarship-granting organizations and eligible workforce training organizations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CRUZ (for himself, Mr. SCOTT of South Carolina, Mr. ALEXANDER, Ms. ERNST, Mr. COTTON, and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to establish tax credits to encourage individual and corporate taxpayers to contribute to scholarships for students through eligible scholarship-granting organizations and eligible workforce training organizations, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Education Freedom
5 Scholarships and Opportunity Act”.
SEC. 2. PURPOSE.

The purpose of this Act is to encourage individual
and corporate taxpayers to contribute to scholarships for
individual students through eligible scholarship-granting
organizations and eligible workforce training organiza-
tions, as identified by States.

TITLE I—AMENDMENTS TO THE
INTERNAL REVENUE CODE
OF 1986

SEC. 101. REFERENCES TO THE INTERNAL REVENUE CODE
OF 1986.

Except as otherwise expressly provided, whenever in
this title an amendment or repeal is expressed in terms
of an amendment to, or repeal of, a section or other provi-
sion, the reference shall be considered to be made to a
section or other provision of the Internal Revenue Code
of 1986.

SEC. 102. TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE
SCHOLARSHIP-GRANTING ORGANIZATIONS
AND ELIGIBLE WORKFORCE TRAINING ORGA-
NIZATIONS.

(a) CREDIT FOR INDIVIDUALS.—

(1) IN GENERAL.—Subpart A of part IV of sub-
chapter A of chapter 1 is amended by adding after
section 25D the following new section:
"SEC. 25E. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-GRANTING ORGANIZATIONS AND ELIGIBLE WORKFORCE TRAINING ORGANIZATIONS.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of any qualified contributions made by the taxpayer during the taxable year.

"(b) AMOUNT OF CREDIT.—The credit allowed under subsection (a) in any taxable year shall not exceed 10 percent of the taxpayer’s adjusted gross income for the taxable year.

"(c) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED CONTRIBUTION.—The term ‘qualified contribution’ means a contribution of cash to any eligible scholarship-granting organization or eligible workforce training organization.

“(2) QUALIFIED EXPENSE.—The term ‘qualified expense’ means any educational expense that is—

“(A) for an individual student’s elementary or secondary education, as recognized by the State,

“(B) for the secondary education component of an individual elementary or secondary student’s career and technical education, as de-
4

1 fined by section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006 (20
2 U.S.C. 2302(5)), or
3
4 "(C) for the purpose of providing eligible
5 individual participants with scholarships for
6 secondary or postsecondary vocational education
7 and training, workforce development, or appren-
8 ticeship training, including preparation and ex-
9amination costs relating to portable certificates
10 or credentials, or industry recognized certifi-
11 cation or credentialing programs.

"(3) ELIGIBLE SCHOLARSHIP-GRANTING ORGA-
13 NIZATION.—The term 'eligible scholarship-granting
14 organization' means—

"(A) an organization that—
16 "(i) is described in section 501(c)(3)
17 and exempt from taxation under section
18 501(a),
19 "(ii) provides qualifying scholarships
20 for qualified expenses to only individual el-
21 ementary and secondary students who—
22 "(I) reside in the State in which
23 the eligible scholarship-granting orga-
24 nization is recognized, or
"(II) in the case of the Bureau of
Indian Education, are members of a
federally recognized tribe,
"(iii) a State reports to the Secretary
of Education as an eligible scholarship-
granting organization pursuant to section
201(c)(5)(B) of the Education Freedom
Scholarships and Opportunity Act,
"(iv) allocates at least 90 percent of
qualified contributions to qualifying schol-
arships for qualified expenses, and
"(v) provides scholarships to—
"(I) more than 1 eligible student,
"(II) more than 1 eligible family,
and
"(III) different eligible students
attending more than one education
provider, or
"(B) an organization that—
"(i) is described in section 501(c)(3)
and exempt from taxation under section
501(a), and
"(ii) pursuant to State law, was able,
as of the date of the enactment of the
Education Freedom Scholarships and Op-
opportunities Act, to receive contributions that
are eligible for a State tax credit if such
contributions are used by the organization
to provide scholarships to individual ele-
mentary and secondary students, including
scholarships for attending private schools.

"(4) Eligible workforce training organi-
zation.—

"(A) In general.—The term 'eligible
workforce training organization' means any or-
organization—

"(i) which is—

"(I) described in section
501(c)(3) and exempt from taxation
under section 501(a), and

"(II) not a private foundation (as
defined in section 509),

"(ii) whose purpose is to provide voca-
tional education and training, workforce
development, or apprenticeship training to
eligible potential secondary or postsec-
ondary students, including organizations
whose purpose is to provide scholarships
for portable certificates or credentials, or
industry recognized certifications or
credentialing programs, including preparation and examination costs,

"(iii) which is in compliance with applicable State laws,

"(iv) which a State has reported to the Secretary of Education as an eligible workforce training organization pursuant to section 201(c)(5)(B) of the Education Freedom Scholarships and Opportunity Act,

"(v) which satisfies the requirements described in clauses (iv) and (v) of paragraph (3)(A).

"(B) POTENTIAL ELIGIBLE WORKFORCE TRAINING ORGANIZATIONS.—Eligible workforce training organizations may include, but are not limited to, organizations such as the following (provided that such organizations satisfy the requirements under subparagraph (A)):

"(i) Community colleges.

"(ii) Workforce training programs (as defined by the applicable State workforce agency).

"(iii) Organizations which provide—
"(I) career and technical education, or

"(II) training or apprenticeships, including, but not limited to, training or apprenticeships operated by a collective bargaining organization or that provide industry recognized certifications or credentials.

"(iv) Community organizations that provide training that results in a certification.

"(5) QUALIFYING SCHOLARSHIP.—The term ‘qualifying scholarship’ means—

"(A) a scholarship granted by an eligible scholarship-granting organization to an individual elementary or secondary student, or

"(B) a scholarship granted by an eligible workforce training organization as a scholarship to a secondary or postsecondary student for the purpose of vocational education and training, workforce development, obtaining portable certificates or credentials, or industry recognized certification or credentialing programs, including preparation and examination costs,

under this section.
“(6) STATE.—The term ‘State’ means each of
the 50 States, the District of Columbia, the Com-
monwealth of Puerto Rico, American Samoa, Guam,
the Commonwealth of the Northern Mariana Is-
lands, the United States Virgin Islands, and the De-
partment of the Interior (acting through the Bureau
of Indian Education).

“(d) RULES OF CONSTRUCTION.—

“(1) IN GENERAL.—A scholarship awarded to a
student from the proceeds of a qualified contribution
under this section or section 45T shall not be con-
sidered assistance to the school, eligible workforce
training organization, or other educational provider
that enrolls, or provides educational services to, the
student or the student’s parents.

“(2) NOT TREATED AS INCOME.—The amount
of any such scholarship shall not be treated as in-
come of the student or their parents for purposes of
Federal tax laws or for determining eligibility for
any other Federal program.

“(3) PROHIBITION OF CONTROL OVER NON-
PUBLIC EDUCATION PROVIDERS.—

“(A) Nothing in this Act shall be con-
strued to permit, allow, encourage, or authorize
any Federal control over any aspect of any pri-
vate, religious, or home education provider, whether or not a home education provider is treated as a private school or home school under State law. This Act shall not be con-
strued to exclude private, religious, or home education providers from participation in pro-
grams or services under this Act.

"(B) Nothing in this Act shall be con-
strued to permit, allow, encourage, or authorize an entity submitting a list of eligible scholar-
ship-granting organizations or eligible workforce training organizations on behalf of a State to mandate, direct, or control any aspect of a pri-
vate or home education provider, regardless of whether or not a home education provider is treated as a private school under state law.

"(C) No participating State or entity act-
ing on behalf of a State shall exclude, discrimi-
nate against, or otherwise disadvantage any education provider with respect to programs or services under this Act based in whole or in part on the provider’s religious education char-
acter or affiliation, including religiously- or mis-
sion-based policies or practices.
"(4) Parental rights to use scholarships.—No participating State or entity acting on behalf of a State shall disfavor or discourage the use of such scholarships for the purchase of elementary and secondary or workforce training education services, including those services provided by private or nonprofit entities, such as faith-based providers.

"(5) State and local authority.—Nothing in this section or section 45T shall be construed to modify a State or local government’s authority and responsibility to fund education.

"(c) Limitations.—

"(1) Tax liability.—No credit allowed under this section or section 45T shall exceed the taxpayer’s Federal income tax liability for the taxable year.

"(2) Prohibitions.—A taxpayer is prohibited from selling or transferring any portion of a tax credit allowed under this section or section 45T.

"(3) Denial of double benefit.—The Secretary shall prescribe such regulations or other guidance to ensure that the sum of the tax benefits provided by Federal, State, or local law for a qualified contribution receiving a Federal tax credit in any taxable year shall not exceed the sum of the quali-
fied contributions made by the taxpayer for the taxable year.

"(f) CARRYOVER OF CREDIT.—If a tax credit allowed under this section or section 45T is not fully used within the applicable taxable year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years.

"(g) ELECTION.—This section shall apply to a taxpayer for a taxable year only if the taxpayer elects to have this section apply for such taxable year.

"(h) ALTERNATIVE MINIMUM TAX.—For purposes of calculating the alternative minimum tax under section 55, a taxpayer may use any credit received for a qualified contribution under this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of is amended by inserting after the item relating to section 25D the following new item:

"Sec. 25B. Contributions to eligible scholarship-granting organizations and eligible workforce training organizations.”.

(b) CREDIT FOR CORPORATIONS.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:
“SEC. 45T. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-GRA\nNTING ORGANIZATIONS AND ELIGIBLE WORKFORCE TRAINING ORGANIZATIONS.

“(a) ALLOWANCE OF CREDIT.—For purposes of section 38, in the case of a domestic corporation, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of any qualified contributions (as defined in section 25E(e)(1)) made by such corporation taxpayer during the taxable year.

“(b) AMOUNT OF CREDIT.—The credit allowed under subsection (a) for any taxable year shall not exceed 5 percent of the taxable income (as defined in section 170(b)(2)(D)) of the domestic corporation for such taxable year.

“(c) ADDITIONAL PROVISIONS.—For purposes of this section, any qualified contributions made by a domestic corporation shall be subject to the provisions of section 25E, to the extent applicable.

“(d) ELECTION.—This section shall apply to a taxpayer for a taxable year only if the taxpayer elects to have this section apply for such taxable year.”.

(2) CREDIT PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended—

(A) by striking “plus” at the end of para-
(B) by striking the period at the end of paragraph (32) and inserting "plus", and
(C) by adding at the end the following new paragraph:
"(33) the credit for qualified contributions determined under section 45T(a)."

(3) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:
"Sec. 45T. Contributions to eligible scholarship-granting organizations and eligible workforce training organizations."

TITLE II—EDUCATION FREEDOM SCHOLARSHIPS AND OPPORTUNITY ACT WEB PORTAL AND ADMINISTRATION
SEC. 201. EDUCATION FREEDOM SCHOLARSHIPS AND OPPORTUNITY ACT WEB PORTAL AND ADMINISTRATION.

(a) IN GENERAL.—The Secretary of Education shall, in coordination with the Secretary of the Treasury and the Secretary of Labor, establish, host, and maintain a Web portal that—
(1) lists all scholarship-granting organizations and workforce training organizations that are eligi-
ble under section 25E or 45T of the Internal Revenue Code of 1986;

(2) enables a taxpayer to make a qualifying contribution to one or more eligible scholarship-granting organizations and eligible workforce training organizations and to immediately obtain both a pre-approval of a tax credit for that contribution and a receipt for tax filings;

(3) provides information about the tax benefits of the provisions of the Education Freedom Scholarships and Opportunity Act under the Internal Revenue Code of 1986; and

(4) enables a State to submit and update information about its programs and its eligible scholarship-granting organizations and eligible workforce training organizations for informational purposes only, including information on—

(A) student eligibility;

(B) allowable educational expenses;

(C) the types of allowable education providers;

(D) the percentage of funds an organization may use for program administration; and

(E) the percentage of total contributions the organization awards in a calendar year.
(b) NONPORTAL CONTRIBUTIONS.—A taxpayer may opt to make a contribution directly to an eligible scholarship-granting organization or an eligible workforce training organization, instead of through the Web portal described in subsection (a), provided that the taxpayer, or the eligible scholarship-granting organization or eligible workforce training organization on behalf of the taxpayer, applies for, and receives pre-approval for a tax credit from the Secretary of Education in coordination with the Secretary of the Treasury.

(e) NATIONAL AND STATE CAPS ON CREDITS.—

(1) NATIONAL CAP.—There is a cap of $10,000,000,000 on the sum of the contributions that qualify for a credit under section 25E and section 45T of the Internal Revenue Code of 1986 for each calendar year, of which—

(A) $5,000,000,000 shall be allotted for qualified contributions to eligible scholarship-granting organizations; and

(B) $5,000,000,000 shall be allotted for qualified contributions to eligible workforce training organizations.

(2) ALLOCATION OF CAP.—
(A) Initial Allocations.—For each calendar year, the Secretary of Education, in coordination with the Secretary of Labor, shall—

(i) from the amount allotted under paragraph (1)(A)—

(I) first reserve, for each State, an amount equal to the sum of the qualifying contributions made in the State in the previous year; and

(II) next, allocate the remaining amount among the participating States by allocating to each State the sum of—

(aa) an amount that bears the same relationship to 20 percent of such remaining amount as the number of individuals aged 5 through 17 in the State, as determined by the Secretary of Education on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined; and
(bb) an amount that bears
the same relationship to 80 per-
cent of such remaining amount
as the number of individuals
aged 5 through 17 from families
with incomes below the poverty
line in the State, as determined
by the Secretary of Education, on
the basis of the most recent sat-
sisfactory data, bears to the num-
ber of those individuals in all
such States, as so determined;
and

(ii) from the amount allotted under
paragraph (1)(B)—

(I) first reserve, for each State,
an amount equal to the sum of the
qualifying contributions made in the
State in the previous year attributable
to eligible workforce training organi-
zations; and

(II) next, allocate the remaining
amount among the participating
States by allocating to each State an
amount determined through a system,
as established and maintained by the Secretary of Labor, that accurately reflects demand and potential qualified participants for apprenticeships and workforce training within that State.

(B) MINIMUM ALLOCATION.—Notwithstanding subparagraph (A), no State receiving an allotment under this section may receive less than one-half of one percent of the amount allotted for a fiscal year.

(C) ALTERNATIVE ALLOCATION FOR QUALIFIED CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-GRANTING ORGANIZATIONS.—

(i) IN GENERAL.—Not later than the end of the fifth year of the program or one year after the end of the first fiscal year for which the total amount of credits claimed under section 25E and section 45T of the Internal Revenue Code of 1986 for qualified contributions to eligible scholarship-granting organizations is $2,500,000,000 or more, whichever comes first, the Secretary of Education shall, by regulation, provide for an alternative allo-
cation method for the amount described in paragraph (1)(A) that shall take effect beginning with the first fiscal year after the regulation takes effect.

(ii) **ALTERNATIVE ALLOCATION METHOD.**—The alternative allocation method described in clause (i) shall be expressed as a formula based on a combination of the following data for each State, as reported by the State to the Secretary of Education:

(I) The relative percentage of students in the State who receive a elementary or secondary scholarship through a State program that is financed through State tax-credited donations or appropriations and that permits the elementary or secondary scholarship to be used to attend a private school.

(II) The total amount of all elementary and secondary scholarships awarded through a State program that is financed through State tax-credited donations or appropriations compared to the total amount of cur-
rent State and local expenditures for free public education in the State.

(iii) Allocation formula.—For any fiscal year to which clause (i) applies, the Secretary of Education shall—

(I) first reserve, for each State, an amount equal to the sum of the qualifying contributions made in the State in the previous year;

(II) next, allocate two-thirds of the remaining amount of the national cap for that year using the alternative allocation method in clause (ii); and

(III) then, allocate one-third of the remaining amount in accordance with subparagraph (A)(ii).

(iv) Ineligibility.—For any fiscal year to which clause (i) applies, a State that does not provide the Secretary of Education with information described in clause (ii) is not eligible to receive an allocation through the alternative allocation method under clause (ii).

(3) Allowable partnerships.—A State may choose to administer the allocation it receives under
paragraph (2) in partnership with 1 or more States, provided that the eligible scholarship-granting organizations or eligible workforce training organizations in each partner State serve students who reside in all States in the partnership.

(4) Total Allocation.—A State’s allocation, for any fiscal year, is the sum of the amount determined for it under subparagraphs (A) and (B) of paragraph (2), except as provided in paragraph (2)(C).

(5) Allocation and Adjustments.—

(A) Initial Allocation to States.—No later than November 1 of the year preceding a year for which there is a national cap on credits under paragraph (1) (hereafter in this section, the “applicable year”), or as early as practicable with respect to the first year, the Secretary of Education shall announce the State allocations under paragraph (2) for the applicable year.

(B) List of Eligible Scholarship-Granting Organizations and Eligible Workforce Training Organizations.—No later than January 1 of each applicable year, or as early as practicable with respect to the first
year, each State shall provide the Secretary of Education a list of eligible scholarship-granting organizations and eligible workforce training organizations described in paragraphs (3)(A) and (4) of section 25E(e) of the Internal Revenue Code of 1986, including a certification that the entity submitting the list on behalf of the State has the authority to perform this function. Neither this Act nor any other Federal law shall be construed as limiting the entities that may submit the list on behalf of a State.

(C) REALLOCATION.—

(i) IN GENERAL.—The Secretary of Education shall, in accordance with paragraph (2), reallocate to any other States the allocation of a State which, for any applicable year—

(I) fails to provide the Secretary of Education a list of eligible scholarship-granting organizations and eligible workforce training organizations pursuant to subparagraph (B); and

(II) does not have an eligible scholarship-granting organization (as described in section 25E(e)(3)(B) of
the Internal Revenue Code of 1986) located in such State.

(ii) UNCLAIMED CREDITS.—On or after April 1 of any applicable year, the Secretary of Education may reallocate, to 1 or more other States that have eligible scholarship-granting organizations and eligible workforce training organizations in the States, without regard to paragraph (2), the allocation of a State for which the State’s allocation has not been claimed.

(d) DEFINITIONS.—The definitions of terms in section 25E(c) of the Internal Revenue Code of 1986 apply to those terms as used in this title.

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of administering this section and sections 25E and 45T of the Internal Revenue Code of 1986, there are authorized to be appropriated, and there are appropriated, such sums as may be necessary for fiscal year 2019 and each succeeding fiscal year.