

116TH CONGRESS  
2D SESSION

# H. R. 8100

To provide for emergency education freedom grants, 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 for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 25, 2020

Mr. BYRNE (for himself, Mr. LIPINSKI, and Mr. WALKER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for emergency education freedom grants, 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 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “School Choice Now  
3 Act”.

4 **TITLE I—EMERGENCY**  
5 **EDUCATION FREEDOM GRANTS**

6 **SEC. 101. EMERGENCY EDUCATION FREEDOM GRANTS.**

7 (a) DEFINITIONS.—In this title:

8 (1) DEFINITIONS FROM THE INTERNAL REV-  
9 ENUE CODE OF 1986.—The definitions in section  
10 25E(c) of the Internal Revenue Code of 1986, as  
11 added by section 201, shall apply to this section, ex-  
12 cept as otherwise provided.

13 (2) ELIGIBLE SCHOLARSHIP-GRANTING ORGANI-  
14 ZATION.—The term “eligible scholarship-granting  
15 organization” means—

16 (A) an organization that—

17 (i) is described in section 501(c)(3) of  
18 the Internal Revenue Code of 1986 and ex-  
19 empt from taxation under section 501(a)  
20 of such Code;

21 (ii) provides qualifying scholarships to  
22 an eligible student who—

23 (I) resides in the State in which  
24 the eligible scholarship-granting orga-  
25 nization is recognized; or

1 (II) in the case of funds provided  
2 to the Secretary of the Interior, at-  
3 tending elementary schools or sec-  
4 ondary schools operated or funded by  
5 the Bureau of Indian Education;

6 (iii) is identified by a Governor to re-  
7 ceive an allotment under subsection (b);

8 (iv) agrees to allocate at least 95 per-  
9 cent of its allotment under subsection (c)  
10 to qualifying scholarships;

11 (v) implements robust policies and  
12 procedures to prevent waste, fraud, and  
13 abuse in the program that it administers;  
14 and

15 (vi) provides qualifying scholarships  
16 to—

17 (I) more than 1 eligible student;

18 (II) more than 1 eligible family;

19 and

20 (III) different eligible students  
21 attending more than 1 education pro-  
22 vider; or

23 (B) an organization that—

24 (i) is described in section 501(c)(3) of  
25 the Internal Revenue Code of 1986 and ex-

1           empt from taxation under section 501(a)  
2           of such Code;

3           (ii) pursuant to State law, was able,  
4           as of January 1, 2020, to receive contribu-  
5           tions that are eligible for a State tax credit  
6           if such contributions are used by the orga-  
7           nization to provide scholarships to indi-  
8           vidual elementary and secondary students,  
9           including scholarships for attending private  
10          schools;

11          (iii) agrees to allocate at least 95 per-  
12          cent of its allotment under subsection (c)  
13          to qualifying scholarships;

14          (iv) implements robust policies and  
15          procedures to prevent waste, fraud, and  
16          abuse in the program that it administers;  
17          and

18          (v) provides qualifying scholarships  
19          to—

20                  (I) more than 1 eligible student;

21                  (II) more than 1 eligible family;

22                  and

23                  (III) different eligible students  
24                  attending more than 1 education pro-  
25                  vider.

1           (3) EMERGENCY EDUCATION FREEDOM GRANT  
2 FUNDS.—The term “emergency education freedom  
3 grant funds” means the amount of funds available  
4 under subsection (b) or (c)(1)(A).

5           (4) GOVERNOR.—The term “Governor” means  
6 the Governor of a State, the chief executive officer  
7 of the United States Virgin Islands, Guam, Amer-  
8 ican Samoa, and the Commonwealth of the Northern  
9 Mariana Islands, and the Secretary of the Interior.

10          (5) SECRETARY.—The term “Secretary” means  
11 the Secretary of Education.

12          (6) STATE.—The term “State” means each of  
13 the 50 States, the District of Columbia, and the  
14 Commonwealth of Puerto Rico.

15       (b) GRANTS.—

16           (1) PROGRAM AUTHORIZED.—

17               (A) RESERVATIONS.—From any amounts  
18 appropriated for section 18003 of division B of  
19 the CARES Act on or after the date of enact-  
20 ment of this Act, the Secretary shall reserve—

21                   (i) of the amount reserved for the  
22                   Outlying Areas in section 18001(a)(1) of  
23                   Part B of the CARES Act on or after en-  
24                   actment, 10 percent for allotments for the  
25                   United States Virgin Islands, Guam,

1 American Samoa, and the Commonwealth  
2 of the Northern Mariana Islands, to be dis-  
3 tributed among those outlying areas on the  
4 basis of their relative need, as determined  
5 by the Secretary, in accordance with the  
6 purpose of this title; and

7 (ii) of the amount reserved for the  
8 Bureau of Indian Education in section  
9 18001(a)(2) of part B of the CARES Act  
10 on or after enactment, 10 percent of such  
11 amounts for the Secretary of the Interior,  
12 acting through the Bureau of Indian Edu-  
13 cation, to be used to provide subgrants de-  
14 scribed in subsection (c) to eligible scholar-  
15 ship-granting organizations that serve stu-  
16 dents attending elementary schools or sec-  
17 ondary schools operated or funded by the  
18 Bureau of Indian Education.

19 (B) STATE RESERVATION.—From any  
20 amount appropriated for section 18003 of divi-  
21 sion B of the CARES Act on or after the date  
22 of enactment of this Act that a State receives,  
23 a State shall reserve 10 percent of those funds  
24 to award emergency education freedom grant

1 funds to eligible scholarship granting organiza-  
2 tions in the State.

3 (c) SUBGRANTS TO ELIGIBLE SCHOLARSHIP-GRANT-  
4 ING ORGANIZATIONS.—

5 (1) IN GENERAL.—A Governor shall use funds  
6 reserved under subsection (b) to award subgrants to  
7 eligible scholarship-granting organizations in the  
8 State.

9 (2) INITIAL TIMING.—

10 (A) STATES WITH EXISTING TAX CREDIT  
11 SCHOLARSHIP PROGRAM.—

12 (i) By not later than 15 days after re-  
13 ceiving an allotment from any amounts re-  
14 ceived for section 18003 of division B of  
15 the CARES Act under, a State with an ex-  
16 isting, as of the date of enactment of this  
17 Act, tax credit scholarship program shall  
18 distribute not less than 50 percent of the  
19 allotment to award subgrants to eligible  
20 scholarship-granting organizations under  
21 subsection (a)(1)(B) in the State in pro-  
22 portion to the contributions received in cal-  
23 endar year 2019 that were eligible for a  
24 State tax credit if such contributions are  
25 used by the organization to provide schol-

1 arships to eligible students, including  
2 scholarships for attending private schools.

3 (ii) By not later than 60 days after  
4 receiving an allotment from any amount  
5 received for section 18003 of division B of  
6 the CARES Act, a Governor with an exist-  
7 ing tax credit scholarship program shall  
8 use the balance of the total allotment to  
9 award subgrants to eligible scholarship-  
10 grant organizations under subsection  
11 (a)(1)(B).

12 (B) STATES WITHOUT TAX CREDIT SCHOL-  
13 ARSHIP PROGRAMS.—

14 (i) By not later than 30 days after re-  
15 ceiving an allotment from any amounts re-  
16 ceived for section 18003 of division B of  
17 the CARES Act, a State without a tax  
18 credit scholarship program shall distribute  
19 not less than 50 percent of the allotment  
20 to award subgrants to eligible scholarship-  
21 granting organizations in the State.

22 (ii) By not later than 90 days after  
23 receiving an allotment from any amounts  
24 received for section 18003 of division B of  
25 the CARES Act, a Governor in a State

1 without an existing tax credit scholarship  
2 program shall use the balance of the allot-  
3 ment to award subgrants to eligible schol-  
4 arship-grant organizations under sub-  
5 section (a)(1)(A).

6 (3) USES OF FUNDS.—An eligible scholarship-  
7 granting organization that receives a subgrant under  
8 this subsection—

9 (A) may reserve not more than 5 percent  
10 of the subgrant funds for public outreach, stu-  
11 dent and family support activities, and adminis-  
12 trative expenses related to the subgrant; and

13 (B) shall use not less than 95 percent of  
14 the subgrant funds to provide qualifying schol-  
15 arships for qualified expenses only to eligible  
16 students who reside in the State in which the  
17 eligible scholarship-granting organization is rec-  
18 ognized.

19 (d) REALLOCATION.—A State shall return to the Sec-  
20 retary any amounts of the allotment reserved under this  
21 Act that the Governor does not award as subgrants under  
22 subsection (c) within 120 days of receipt of that allotment,  
23 and the Secretary shall reallocate such funds to the re-  
24 maining eligible States.

25 (e) RULES OF CONSTRUCTION.—

1           (1) Education providers that accept scholarship  
2 funds from students under this section shall not, by  
3 reason of such participation, be considered recipients  
4 of Federal financial assistance, nor shall they, by  
5 reason of such participation, be required to comply  
6 with provisions of federal law not otherwise in effect  
7 as of the date of the passage of this Act.

8           (2) The rules of construction under section  
9 25E(d) of the Internal Revenue Code of 1986, as  
10 added by section 201, shall apply to this section in  
11 the same manner as such rules apply to section 25E  
12 of such Code, as so added.

13 **TITLE II—TAX CREDITS FOR**  
14 **CONTRIBUTIONS TO ELIGI-**  
15 **BLE SCHOLARSHIP-GRANT-**  
16 **ING ORGANIZATIONS**

17 **SEC. 201. TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE**  
18 **SCHOLARSHIP-GRANTING ORGANIZATIONS.**

19           (a) CREDIT FOR INDIVIDUALS.—Subpart A of part  
20 IV of subchapter A of chapter 1 of the Internal Revenue  
21 Code of 1986 is amended by adding after section 25D the  
22 following new section:

1 **“SEC. 25E. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-**  
2 **GRANTING ORGANIZATIONS.**

3 “(a) ALLOWANCE OF CREDIT.—Subject to section  
4 202(c) of the School Choice Now Act, in the case of an  
5 individual, there shall be allowed as a credit against the  
6 tax imposed by this chapter for the taxable year an  
7 amount equal to the sum of any qualified contributions  
8 made by the taxpayer during the taxable year.

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

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) ELIGIBLE SCHOLARSHIP-GRANTING ORGA-  
15 NIZATION.—The term ‘eligible scholarship-granting  
16 organization’ means—

17 “(A) an organization that—

18 “(i) is described in section 501(c)(3)  
19 and exempt from taxation under section  
20 501(a),

21 “(ii) provides qualifying scholarships  
22 to an eligible student who—

23 “(I) resides in the State in which  
24 the eligible scholarship-granting orga-  
25 nization is recognized, or

1                   “(II) in the case of the Bureau of  
2                   Indian Education, are members of a  
3                   federally recognized tribe,

4                   “(iii) a State identifies to the Sec-  
5                   retary as an eligible scholarship-granting  
6                   organization under section 202(c)(5)(B) of  
7                   the School Choice Now Act,

8                   “(iv) allocates at least 90 percent of  
9                   qualified contributions to qualifying schol-  
10                  arships on an annual basis,

11                  “(v) implements robust policies and  
12                  procedures to prevent waste, fraud, and  
13                  abuse in the program that it administers,  
14                  and

15                  “(vi) provides qualifying scholarships  
16                  to—

17                                 “(I) more than 1 eligible student,

18                                 “(II) more than 1 eligible family,

19                                 and

20                                 “(III) different eligible students  
21                                 attending more than 1 education pro-

22                                 vider, or

23                                 “(B) an organization that—

1           “(i) is described in section 501(c)(3)  
2           and exempt from taxation under section  
3           501(a),

4           “(ii) pursuant to State law, was able,  
5           as of January 1, 2021, to receive contribu-  
6           tions that are eligible for a State tax credit  
7           if such contributions are used by the orga-  
8           nization to provide scholarships to indi-  
9           vidual elementary and secondary students,  
10          including scholarships for attending private  
11          schools,

12          “(iii) agrees to allocate at least 905  
13          percent of its allotment under subsection  
14          (c) to qualifying scholarships on an annual  
15          basis,

16          “(iv) implements robust policies and  
17          procedures to prevent waste, fraud, and  
18          abuse in the program that it administers,  
19          and

20          “(v) provides qualifying scholarships  
21          to—

22                  “(I) more than 1 eligible student,

23                  “(II) more than 1 eligible family,

24                  and

1                   “(III) different eligible students  
2                   attending more than 1 education pro-  
3                   vider.

4                   “(2) ELIGIBLE STUDENT.—The term ‘eligible  
5                   student’ means—

6                   “(A) a child, as that term is defined in sec-  
7                   tion 8101(3) of the Elementary and Secondary  
8                   Education Act of 1965, who comes from a fam-  
9                   ily whose household income is no more than  
10                  200 percent of the median household income for  
11                  that State, as determined by the Bureau of the  
12                  Census in compiling the most recent data for  
13                  the American Community Survey, or

14                  “(B) a child with a disability, as that term  
15                  is defined in section 602 of the Individuals with  
16                  Disabilities Education Act.

17                  “(3) QUALIFIED CONTRIBUTION.—The term  
18                  ‘qualified contribution’ means a contribution of cash  
19                  to any eligible scholarship-granting organization.

20                  “(4) QUALIFIED EXPENSE.—The term ‘quali-  
21                  fied expense’ means any educational expense that  
22                  is—

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

1           “(B) for the secondary education compo-  
2           nent of an individual elementary or secondary  
3           student’s career and technical education, as de-  
4           fined by section 3(5) of the Carl D. Perkins Ca-  
5           reer and Technical Education Act of 2006 (20  
6           U.S.C. 2302(5)).

7           “(5) QUALIFYING SCHOLARSHIP.—The term  
8           ‘qualifying scholarship’ means a scholarship granted  
9           by an eligible scholarship-granting organization to  
10          an individual elementary or secondary student for a  
11          qualified expense.

12          “(6) STATE.—The term ‘State’ means each of  
13          the 50 States, the District of Columbia, the Com-  
14          monwealth of Puerto Rico, the outlying areas (as de-  
15          fined in section 1121(c) of the Elementary and Sec-  
16          ondary Education Act of 1965 (20 U.S.C. 6331(c)),  
17          and the Department of the Interior (acting through  
18          the Bureau of Indian Education).

19          “(d) RULES OF CONSTRUCTION.—

20          “(1) IN GENERAL.—A qualifying scholarship  
21          awarded to a student from the proceeds of a quali-  
22          fied contribution under this section shall not be con-  
23          sidered assistance to the school or other educational  
24          provider that enrolls, or provides educational services  
25          to, the student or the student’s parents.

1           “(2) EXCLUSION FROM INCOME.—Gross income  
2 shall not include any amount received by an indi-  
3 vidual as a qualifying scholarship and such amount  
4 shall not be taken into account as income or re-  
5 sources for purposes of determining the eligibility of  
6 such individual or any other individual for benefits  
7 or assistance, or the amount or extent of such bene-  
8 fits or assistance, under any Federal program or  
9 under any State or local program financed in whole  
10 or in part with Federal funds.

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

13           “(A)(i) Nothing in this section shall be  
14 construed to permit, allow, encourage, or au-  
15 thorize any Federal control over any aspect of  
16 any private, religious, or home education pro-  
17 vider, whether or not a home education provider  
18 is treated as a private school or home school  
19 under State law.

20           “(ii) This section shall not be construed to  
21 exclude private, religious, or home education  
22 providers from participation in programs or  
23 services under this section.

24           “(B) Nothing in this section shall be con-  
25 strued to permit, allow, encourage, or authorize

1 an entity submitting a list of eligible scholar-  
2 ship-granting organizations on behalf of a State  
3 pursuant to section 202(c)(5) of the School  
4 Choice Now Act to mandate, direct, or control  
5 any aspect of a private or home education pro-  
6 vider, regardless of whether or not a home edu-  
7 cation provider is treated as a private school  
8 under State law.

9 “(C) No participating State or entity act-  
10 ing on behalf of a State pursuant to section  
11 202(c)(5) of the School Choice Now Act shall  
12 exclude, discriminate against, or otherwise dis-  
13 advantage any education provider with respect  
14 to programs or services under this section based  
15 in whole or in part on the provider’s religious  
16 character or affiliation, including religiously  
17 based or mission-based policies or practices.

18 “(4) PARENTAL RIGHTS TO USE SCHOLAR-  
19 SHIPS.—No participating State or entity acting on  
20 behalf of a State pursuant to section 202(c)(5) of  
21 the School Choice Now Act shall disfavor or discour-  
22 age the use of qualifying scholarships for the pur-  
23 chase of elementary and secondary education serv-  
24 ices, including those services provided by private or  
25 nonprofit entities, such as faith-based providers.

1           “(5) STATE AND LOCAL AUTHORITY.—Nothing  
2           in this section shall be construed to modify a State  
3           or local government’s authority and responsibility to  
4           fund education.

5           “(e) DENIAL OF DOUBLE BENEFIT.—The Secretary  
6           shall prescribe such regulations or other guidance to en-  
7           sure that the sum of the tax benefits provided by Federal,  
8           State, or local law for a qualified contribution receiving  
9           a Federal tax credit in any taxable year does not exceed  
10          the sum of the qualified contributions made by the tax-  
11          payer for the taxable year.

12          “(f) CARRYFORWARD OF CREDIT.—If a tax credit al-  
13          lowed under this section is not fully used within the appli-  
14          cable taxable year because of insufficient tax liability on  
15          the part of the taxpayer, the unused amount may be car-  
16          ried forward for a period not to exceed 5 years.

17          “(g) ELECTION.—This section shall apply to a tax-  
18          payer for a taxable year only if the taxpayer elects to have  
19          this section apply for such taxable year.

20          “(h) ALTERNATIVE MINIMUM TAX.—For purposes of  
21          calculating the alternative minimum tax under section 55,  
22          a taxpayer may use any credit received for a qualified con-  
23          tribution under this section.”.

24          (b) CLERICAL AMENDMENT.—The table of sections  
25          for subpart A of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by in-  
2 serting after the item relating to section 25D the following  
3 new item:

“Sec. 25E. Contributions to eligible scholarship-granting organizations.”.

4 (c) CREDIT FOR CORPORATIONS.—Subpart D of part  
5 IV of subchapter A of chapter 1 of the Internal Revenue  
6 Code of 1986 is amended by adding at the end the fol-  
7 lowing new section:

8 **“SEC. 45U. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-**  
9 **GRANTING ORGANIZATIONS.**

10 “(a) ALLOWANCE OF CREDIT.—Subject to section  
11 202(c) of the School Choice Now Act, for purposes of sec-  
12 tion 38, there shall be allowed as a credit against the tax  
13 imposed by this chapter for the taxable year an amount  
14 equal to the sum of any qualified contributions (as defined  
15 in section 25E(c)(2)) made by such corporation taxpayer  
16 during the taxable year.

17 “(b) AMOUNT OF CREDIT.—The credit allowed under  
18 subsection (a) for any taxable year shall not exceed 5 per-  
19 cent of the taxable income (as defined in section  
20 170(b)(2)(D)) of the domestic corporation for such taxable  
21 year.

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

1 25E (including subsection (d) of such section), to the ex-  
2 tent applicable.

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

6 (d) CREDIT PART OF GENERAL BUSINESS CRED-  
7 IT.—Section 38(b) is amended—

8 (1) by striking “plus” at the end of paragraph  
9 (32);

10 (2) by striking the period at the end of para-  
11 graph (33) and inserting “, plus”; and

12 (3) by adding at the end the following new  
13 paragraph:

14 “(34) the credit for qualified contributions de-  
15 termined under section 45U(a).”.

16 (e) CLERICAL AMENDMENT.—The table of sections  
17 for subpart D of part IV of subchapter A of chapter 1  
18 is amended by adding at the end the following new item:

“Sec. 45U. Contributions to eligible scholarship-granting organizations.”.

19 (f) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 2020.

1 **SEC. 202. EDUCATION FREEDOM SCHOLARSHIPS WEB POR-**  
2 **TAL AND ADMINISTRATION.**

3 (a) IN GENERAL.—The Secretary of Treasury shall,  
4 in coordination with the Secretary of Education, establish,  
5 host, and maintain a web portal that—

6 (1) lists all eligible scholarship-granting organi-  
7 zations;

8 (2) enables a taxpayer to make a qualifying  
9 contribution to one or more eligible scholarship-  
10 granting organizations and to immediately obtain  
11 both a pre-approval of a tax credit for that contribu-  
12 tion and a receipt for tax filings;

13 (3) provides information about the tax benefits  
14 under sections 25E and 45U of the Internal Rev-  
15 enue Code of 1986; and

16 (4) enables a State to submit and update infor-  
17 mation about its programs and its eligible scholar-  
18 ship-granting organizations for informational pur-  
19 poses only, including information on—

20 (A) student eligibility;

21 (B) allowable educational expenses;

22 (C) the types of allowable education pro-  
23 viders;

24 (D) the percentage of funds an organiza-  
25 tion may use for program administration; and

1                   (E) the percentage of total contributions  
2                   the organization awards in a calendar year.

3           (b) NONPORTAL CONTRIBUTIONS.—A taxpayer may  
4 opt to make a contribution directly to an eligible scholar-  
5 ship-granting organization, instead of through the web  
6 portal described in subsection (a), provided that the tax-  
7 payer, or the eligible scholarship-granting organization on  
8 behalf of the taxpayer, applies for, and receives pre-ap-  
9 proval for a tax credit from the Secretary of Treasury in  
10 coordination with the Secretary of the Education.

11           (c) NATIONAL AND STATE LIMITATIONS ON CRED-  
12 ITS.—

13           (1) NATIONAL LIMITATION.—For each fiscal  
14 year, the total amount of qualifying contributions for  
15 which a credit is allowed under sections 25E and  
16 45U of the Internal Revenue Code of 1986 shall not  
17 exceed \$5,000,000,000.

18           (2) ALLOCATION OF LIMITATION.—

19           (A) INITIAL ALLOCATIONS.—For each cal-  
20 endar year, with respect to the limitation under  
21 paragraph (1), the Secretary of the Treasury,  
22 in consultation with the Secretary of Education,  
23 shall—

24                   (i) allocate to each State an amount  
25                   equal to the sum of the qualifying con-

1 tributions made in the State in the pre-  
2 vious year; and

3 (ii) from any amounts remaining fol-  
4 lowing allocations made under clause (i),  
5 allocate to each participating State an  
6 amount that bears the same relation to  
7 such remaining amount as the number of  
8 individuals aged 5 through 19 in the State,  
9 as determined by the Secretary of Edu-  
10 cation on the basis of the most recent sat-  
11 isfactory data, bears to the number of  
12 those individuals, as so determined, in all  
13 such States, as so determined.

14 (B) MINIMUM ALLOCATION.—Notwith-  
15 standing subparagraph (A), no State receiving  
16 an allocation under this section may receive less  
17 than one-half of 1 percent of the amount allo-  
18 cated for a fiscal year.

19 (C) ALTERNATIVE ALLOCATION.—

20 (i) IN GENERAL.—Not later than the  
21 end of the fifth year of the program or 1  
22 year after the end of the first fiscal year  
23 for which the total amount of credits  
24 claimed under section 25E and section  
25 45U of the Internal Revenue Code of 1986

1 is \$2,500,000,000 or more, whichever  
2 comes first, the Secretary of the Treasury,  
3 in consultation with the Secretary of Edu-  
4 cation, shall, by regulation, provide for an  
5 alternative allocation method that shall  
6 take effect beginning with the first fiscal  
7 year after such regulation takes effect.

8 (ii) ALTERNATIVE ALLOCATION METH-  
9 OD.—The alternative allocation method  
10 shall be expressed as a formula based on  
11 a combination of the following data for  
12 each State, as reported by the State to the  
13 Secretary of Treasury:

14 (I) The relative percentage of  
15 students in the State who receive an  
16 elementary or secondary scholarship  
17 through a State program that is fi-  
18 nanced through State tax-credited do-  
19 nations or appropriations and that  
20 permits the elementary or secondary  
21 scholarship to be used to attend a pri-  
22 vate school.

23 (II) The total amount of all ele-  
24 mentary and secondary scholarships  
25 awarded through a State program

1 that is financed through State tax-  
2 credited donations or appropriations  
3 compared to the total amount of cur-  
4 rent State and local expenditures for  
5 free public education in the State.

6 (iii) ALLOCATION FORMULA.—For any  
7 fiscal year to which clause (i) applies, the  
8 Secretary of Treasury, in consultation with  
9 the Secretary of Education, shall—

10 (I) for each State, allocate an  
11 amount equal to the sum of the quali-  
12 fying contributions made in the State  
13 in the previous year;

14 (II) allocate  $\frac{2}{3}$  of the remaining  
15 amount (after application of subclause  
16 (I)) of the national limitation for that  
17 year using the alternative allocation  
18 method under clause (ii); and

19 (III) allocate  $\frac{1}{3}$  of the remaining  
20 amount (after application of subclause  
21 (I) and (II)) in accordance with sub-  
22 paragraph (A)(ii).

23 (iv) INELIGIBILITY.—For any fiscal  
24 year to which clause (i) applies, a State  
25 that does not provide the Secretary of the

1 Treasury with information described in  
2 clause (ii) is not eligible to receive an allo-  
3 cation through the alternative allocation  
4 method under such clause.

5 (3) ALLOWABLE PARTNERSHIPS.—A State may  
6 choose to administer the allocation it receives under  
7 paragraph (2) in partnership with one or more  
8 States, provided that the eligible scholarship-grant-  
9 ing organizations in each partner State serve stu-  
10 dents who reside in all States in the partnership.

11 (4) ALLOCATION AND ADJUSTMENTS.—

12 (A) INITIAL ALLOCATION TO STATES.—Not  
13 later than November 1 of the year preceding a  
14 year for which there is a national limitation on  
15 credits under paragraph (1) (referred to in this  
16 section as the “applicable year”), or as early as  
17 practicable with respect to the first year, the  
18 Secretary of the Treasury shall announce the  
19 State allocations under paragraph (2) for the  
20 applicable year.

21 (B) LIST OF ELIGIBLE SCHOLARSHIP-  
22 GRANTING ORGANIZATIONS.—

23 (i) IN GENERAL.—Not later than Jan-  
24 uary 1 of each applicable year, or as early  
25 as practicable with respect to the first

1 year, each State shall provide the Sec-  
2 retary of the Treasury a list of eligible  
3 scholarship-granting organizations, includ-  
4 ing a certification that the entity submit-  
5 ting the list on behalf of the State has the  
6 authority to perform this function.

7 (ii) RULE OF CONSTRUCTION.—Nei-  
8 ther this section nor any other Federal law  
9 shall be construed as limiting the entities  
10 that may submit the list on behalf of a  
11 State.

12 (C) REALLOCATION OF UNCLAIMED CRED-  
13 ITS.—The Secretary of the Treasury shall re-  
14 allocate a State’s allocation to other States, in  
15 accordance with paragraph (2), if the State—

16 (i) chooses not to identify scholarship-  
17 granting organizations under subparagraph  
18 (B) in any applicable year; or

19 (ii) does not have an existing eligible  
20 scholarship-granting organization.

21 (D) REALLOCATION.—On or after April 1  
22 of any applicable year, the Secretary of the  
23 Treasury may reallocate, to one or more other  
24 States that have eligible scholarship-granting  
25 organizations in the States, without regard to

1 paragraph (2), the allocation of a State for  
2 which the State's allocation has not been  
3 claimed.

4 (d) DEFINITIONS.—Any term used in this section  
5 which is also used in section 25E of the Internal Revenue  
6 Code of 1986 shall have the same meaning as when used  
7 in such section.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
9 are authorized to be appropriated \$50,000,000 to carry  
10 out section 202(a) of this Act.

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