

107TH CONGRESS  
1ST SESSION

# S. 335

To amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2001

Mr. McCONNELL (for himself, Mr. GRAHAM, Mr. BUNNING, Mr. DEWINE, Mr. WARNER, and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses, 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 “Setting Aside for a  
5 Valuable Education (SAVE) Act”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME OF EDUCATION**2 **DISTRIBUTIONS FROM QUALIFIED STATE**3 **TUITION PROGRAMS.**

4 (a) IN GENERAL.—Subparagraph (B) of section  
5 529(c)(3) of the Internal Revenue Code of 1986 (relating  
6 to distributions) is amended to read as follows:

7 **“(B) DISTRIBUTIONS FOR QUALIFIED**  
8 **HIGHER EDUCATION EXPENSES.—**For purposes  
9 of this paragraph—

10 **“(i) IN-KIND DISTRIBUTIONS.—**No  
11 amount shall be includible in gross income  
12 under subparagraph (A) by reason of a  
13 distribution which consists of providing a  
14 benefit to the distributee which, if paid for  
15 by the distributee, would constitute pay-  
16 ment of a qualified higher education ex-  
17 pense.

18 **“(ii) CASH DISTRIBUTIONS.—**In the  
19 case of distributions not described in  
20 clause (i), if—

21 **“(I) such distributions do not ex-**  
22 **ceed the qualified higher education ex-**  
23 **penses (reduced by expenses described**  
24 **in clause (i)), no amount shall be in-**  
25 **cludible in gross income, and**

1                             “(II) in any other case, the  
2                             amount otherwise includible in gross  
3                             income shall be reduced by an amount  
4                             which bears the same ratio to such  
5                             amount as such expenses bear to such  
6                             distributions.

7                             “(iii) EXCEPTION FOR INSTITUTIONAL  
8                             PROGRAMS.—In the case of any taxable  
9                             year beginning before January 1, 2004,  
10                            clauses (i) and (ii) shall not apply with re-  
11                             spect to any distribution during such tax-  
12                             able year under a qualified State tuition  
13                             program established and maintained by 1  
14                             or more eligible educational institutions.

15                            “(iv) TREATMENT AS DISTRIBUTIONS.—Any benefit furnished to a des-  
16                             ignated beneficiary under a qualified State  
17                             tuition program shall be treated as a dis-  
18                             tribution to the beneficiary for purposes of  
19                             this paragraph.

21                            “(v) COORDINATION WITH HOPE AND  
22                             LIFETIME LEARNING CREDITS.—The total  
23                             amount of qualified higher education ex-  
24                             penses with respect to an individual for the  
25                             taxable year shall be reduced—

1                             “(I) as provided in section  
2                             25A(g)(2), and

3                             “(II) by the amount of such ex-  
4                             penses which were taken into account  
5                             in determining the credit allowed to  
6                             the taxpayer or any other person  
7                             under section 25A.

8                             “(vi) COORDINATION WITH EDU-  
9                             CATION SAVINGS ACCOUNTS.—If, with re-  
10                             spect to an individual for any taxable  
11                             year—

12                             “(I) the aggregate distributions  
13                             to which clauses (i) and (ii) and sec-  
14                             tion 530(d)(2)(A) apply, exceed

15                             “(II) the total amount of qual-  
16                             fied higher education expenses other-  
17                             wise taken into account under clauses  
18                             (i) and (ii) (after the application of  
19                             clause (iv)) for such year,

20                             the taxpayer shall allocate such expenses  
21                             among such distributions for purposes of  
22                             determining the amount of the exclusion  
23                             under clauses (i) and (ii) and section  
24                             530(d)(2)(A).”.

25                             (b) CONFORMING AMENDMENTS.—

7 (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to taxable years beginning after  
9 December 31, 2000.

10 SEC. 3. ELIGIBLE EDUCATIONAL INSTITUTIONS PER-  
11 MITTED TO MAINTAIN QUALIFIED TUITION  
12 PROGRAMS.

13 (a) IN GENERAL.—Section 529(b)(1) of the Internal  
14 Revenue Code of 1986 (defining qualified State tuition  
15 program) is amended by inserting “or by 1 or more eligible  
16 educational institutions” after “maintained by a State or  
17 agency or instrumentality thereof”.

18 (b) PRIVATE QUALIFIED TUITION PROGRAMS LIM-  
19 ITED TO BENEFIT PLANS.—Clause (ii) of section  
20 529(b)(1)(A) of the Internal Revenue Code of 1986 is  
21 amended by inserting “in the case of a program estab-  
22 lished and maintained by a State or agency or instrumen-  
23 tality thereof,” before “may make”.

24 (c) ADDITIONAL REQUIREMENTS FOR CERTAIN PRI-  
25 VATE QUALIFIED TUITION PROGRAMS.—Section 529(b)

1 of the Internal Revenue Code of 1986 is amended by add-  
2 ing at the end the following new paragraph:

3                 “(8) ADDITIONAL REQUIREMENTS FOR CERTAIN  
4                 PRIVATE QUALIFIED TUITION PROGRAMS.—A pro-  
5                 gram established and maintained by 1 or more eligi-  
6                 ble educational institutions and described in para-  
7                 graph (1)(A)(ii) shall not be treated as a qualified  
8                 tuition program unless—

9                     “(A) under such program a trust is cre-  
10                  ated or organized for the sole purpose of paying  
11                  the qualified higher education expenses of the  
12                  designated beneficiary of the account,

13                     “(B) the written governing instrument cre-  
14                  ating the trust of which the account is a part  
15                  provides safeguards to ensure that contributions  
16                  made on behalf of a designated beneficiary re-  
17                  main available to provide for the qualified high-  
18                  er education expenses of the designated bene-  
19                  ficiary, and

20                     “(C) the trust meets the following require-  
21                  ments:

22                         “(i) Any trustee or person who may  
23                  under contract operate or manage the  
24                  trust demonstrates to the satisfaction of  
25                  the Secretary that the manner in which

1 that trustee or person will administer the  
2 trust will be consistent with the require-  
3 ments of this section.

10 (d) APPLICATION OF FEDERAL SECURITIES LAWS TO  
11 PRIVATE QUALIFIED TUITION PROGRAMS.—Section  
12 529(e) of the Internal Revenue Code of 1986 (relating to  
13 other definitions and special rules) is amended by adding  
14 at the end the following new paragraph:

15                     “(6) APPLICATION OF FEDERAL SECURITIES  
16                     LAWS TO PRIVATE QUALIFIED TUITION PRO-  
17                     GRAMS.—Nothing in this section shall be construed  
18                     to exempt any qualified tuition program that is not  
19                     established and maintained by a State or agency or  
20                     instrumentality thereof from any of the requirements  
21                     of the Securities Act of 1933 (15 U.S.C 77a et seq.)  
22                     or the Investment Company Act of 1940 (15 U.S.C  
23                     80a-1 et seq.).”.

24 (e) CONFORMING AMENDMENTS.—

21 (f) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 2000.

1 **SEC. 4. OTHER MODIFICATIONS TO QUALIFIED TUITION**2 **PROGRAMS.**

3 (a) ROLLOVER TO DIFFERENT PROGRAM FOR BEN-  
4 EFIT OF SAME DESIGNATED BENEFICIARY.—Section  
5 529(c)(3)(C) of the Internal Revenue Code of 1986 (relat-  
6 ing to change in beneficiaries) is amended—

7 (1) by striking “transferred to the credit” in  
8 clause (i) and inserting “transferred—

9 “(I) to another qualified tuition  
10 program for the benefit of the des-  
11 ignated beneficiary, or

12 “(II) to the credit”,

13 (2) by adding at the end the following new  
14 clause:

15 “(iii) LIMITATION ON CERTAIN ROLL-  
16 OVERS.—Clause (i)(I) shall only apply to 1  
17 transfer with respect to a designated bene-  
18 ficiary in any year.”, and

19 (3) by inserting “OR PROGRAMS” after “BENE-  
20 FICIARIES” in the heading.

21 (b) MEMBER OF FAMILY INCLUDES FIRST COUS-  
22 IN.—Section 529(e)(2) of the Internal Revenue Code of  
23 1986 (defining member of family) is amended by striking  
24 “and” at the end of subparagraph (B), by striking the  
25 period at the end of subparagraph (C) and by inserting

1   “; and”, and by adding at the end the following new sub-  
2   paragraph:

3                         “(D) any first cousin of such beneficiary.”.

4                         (c) ADJUSTMENT OF LIMITATION ON ROOM AND  
5   BOARD DISTRIBUTIONS.—Section 529(e)(3)(B)(ii) of the  
6   Internal Revenue Code of 1986 is amended to read as fol-  
7   lows:

8                         “(ii) LIMITATION.—The amount treat-  
9                         ed as qualified higher education expenses  
10                        by reason of clause (i) shall not exceed the  
11                        greater of—

12                        “(I) the amount (applicable to  
13                        the student) included for room and  
14                        board for such period in the cost of  
15                        attendance (as defined in section 472  
16                        of the Higher Education Act of 1965  
17                        (20 U.S.C. 1087ll), as in effect on the  
18                        date of the enactment of the Setting  
19                        Aside for a Valuable Education  
20                        (SAVE) Act) for the eligible edu-  
21                        cational institution for such period, or

22                        “(II) the actual invoice amount  
23                        the student residing in housing owned  
24                        or operated by the eligible educational  
25                        institution is charged by such institu-

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2000.

○