

116TH CONGRESS
1ST SESSION

S. 1732

To amend the Internal Revenue Code of 1986 to provide rules for the disallowance and recapture of certain charitable contributions to colleges and universities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2019

Mr. WYDEN 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 rules for the disallowance and recapture of certain charitable contributions to colleges and universities, 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 “College Admissions
5 Fairness Act”.

1 **SEC. 2. TREATMENT OF CERTAIN CHARITABLE CONTRIBU-**
 2 **TIONS TO COLLEGES AND UNIVERSITIES.**

3 (a) IN GENERAL.—Section 170(f) of the Internal
 4 Revenue Code of 1986 is amended by adding at the end
 5 the following new paragraph:

6 “(19) DENIAL OF DEDUCTION AND RECAPTURE
 7 FOR CERTAIN CHARITABLE CONTRIBUTIONS TO COL-
 8 LEGES AND UNIVERSITIES.—

9 “(A) IN GENERAL.—In any taxable year in
 10 which the taxpayer is a restricted contributor—

11 “(i) the deduction under subsection
 12 (a) shall be reduced (but not below zero)
 13 by the disallowed amount, and

14 “(ii) any disallowed amount that ex-
 15 ceeds the amount of the reduction under
 16 clause (i) shall be included in the income
 17 of such restricted contributor in such tax-
 18 able year.

19 “(B) RESTRICTED CONTRIBUTOR.—For
 20 purposes of this paragraph, the term ‘restricted
 21 contributor’ means, with respect to any taxable
 22 year, any individual—

23 “(i) who made any specified contribu-
 24 tion to a specified college or university or
 25 to any related organization of such speci-

1 fied college or university during the appli-
2 cable period, and

3 “(ii) who has an applicable child who
4 is enrolled at such specified college or uni-
5 versity during such taxable year.

6 “(C) DISALLOWED AMOUNT.—For pur-
7 poses of this paragraph, with respect to any
8 specified college or university for any taxable
9 year, the disallowed amount is the amount
10 equal to the excess (if any) of—

11 “(i) the amount of specified contribu-
12 tions of the taxpayer to such specified col-
13 lege or university during the applicable pe-
14 riod, over

15 “(ii) the sum of—

16 “(I) \$100,000, plus

17 “(II) the aggregate amount of
18 the reductions under subparagraph
19 (A)(i) and inclusions under subpara-
20 graph (A)(ii) for all taxable years in
21 the applicable period preceding the
22 taxable year for which the determina-
23 tion is being made.

24 “(D) SPECIFIED CONTRIBUTION.—For
25 purposes of this paragraph, the term ‘specified

1 contribution' means, with respect to any speci-
2 fied college or university at which an applicable
3 child of a restricted contributor is enrolled dur-
4 ing the taxable year—

5 “(i) any contribution for which a de-
6 duction is allowed under this section (or
7 would have been allowed but for this para-
8 graph or subsection (b)) and which is
9 made, directly or indirectly, during the ap-
10 plicable period to such specified college or
11 university or to any related organization
12 by—

13 “(I) the restricted contributor, or

14 “(II) a partnership, corporation,
15 trust, or other entity for the benefit of
16 or at the direction of the restricted
17 contributor,

18 “(ii) any contribution which is made
19 during the applicable period to such speci-
20 fied college or university or to any related
21 organization by—

22 “(I) a donor advised fund (as de-
23 fined in section 4966(d)(2)) with re-
24 spect to which the restricted contrib-

1 utor is a person described in section
2 4966(d)(2)(A)(iii), or

3 “(II) a private foundation with
4 respect to which the restricted con-
5 tributor is a disqualified person (as
6 defined in section 4946(a)), and

7 “(iii) any legally binding pledge which
8 is made during the applicable period to
9 such specified college or university or to
10 any related organization by a person de-
11 scribed in clause (i) or (ii).

12 “(E) APPLICABLE PERIOD.—For purposes
13 of this subsection, the term ‘applicable period’
14 means, with respect to any taxable year, the 6-
15 year period ending with the last day of the tax-
16 able year.

17 “(F) APPLICABLE CHILD.—For purposes
18 of this subsection, the term ‘applicable child’
19 means, with respect to any restricted contrib-
20 utor, any individual who bears a relationship to
21 such restricted contributor that is described in
22 section 152(c)(2)(A).

23 “(G) SPECIFIED COLLEGE OR UNIVERSITY;
24 RELATED ORGANIZATION.—For purposes of this
25 section—

1 “(i) SPECIFIED COLLEGE OR UNIVER-
 2 SITY.—The term ‘specified college or uni-
 3 versity’ means any institution of higher
 4 education (as defined in section 101 of the
 5 Higher Education Act of 1965) other than
 6 an institution which—

7 “(I) has a written policy that
 8 prohibits as a factor in admissions de-
 9 cisions the consideration of—

10 “(aa) direct or indirect do-
 11 nations from an applicant or
 12 family member of an applicant,
 13 and

14 “(bb) the financial ability of
 15 an applicant or family member of
 16 an applicant to make a donation,
 17 and

18 “(II) demonstrates to the satis-
 19 faction of the Secretary that such pol-
 20 icy is properly enforced.

21 “(ii) RELATED ORGANIZATION.—The
 22 term ‘related organization’ means, with re-
 23 spect to any specified college or university,
 24 an organization which—

1 “(I) controls, or is controlled by,
2 such specified college or university,

3 “(II) is controlled by one or more
4 persons which also control such speci-
5 fied college or university, or

6 “(III) is a supported organization
7 (as defined in section 509(f)(3)), or
8 an organization described in section
9 509(a)(3), during the taxable year
10 with respect to such specified college
11 or university.

12 “(H) NO DOUBLE TAXATION.—Any speci-
13 fied contribution which is taken into account
14 under subsection (a) with respect to an applica-
15 ble child for any taxable year shall not be taken
16 into account with respect to another applicable
17 child in any subsequent year.

18 “(I) REGULATIONS.—The Secretary shall
19 prescribe such regulations as may be necessary
20 or appropriate to carry out the purposes of this
21 paragraph, including regulations that provide
22 for the proper treatment of legally binding
23 pledges and other types of specified contribu-
24 tions.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to taxable years beginning 1 year
 3 or more after the date of the enactment of this Act.

4 **SEC. 3. INFORMATION TO BE COLLECTED.**

5 (a) PROGRAM PARTICIPATION AGREEMENTS.—Sec-
 6 tion 487(a) of the Higher Education Act of 1965 (20
 7 U.S.C. 1094(a)) is amended by adding at the end the fol-
 8 lowing:

9 “(30) The institution has a written policy that
 10 prohibits as a factor in admissions decisions the con-
 11 sideration of—

12 “(A) direct or indirect donations from an
 13 applicant or family member of an applicant;
 14 and

15 “(B) the financial ability of an applicant or
 16 a family member of an applicant to make a do-
 17 nation.”.

18 (b) TITLE IV AUDITS.—Section 487(c) of the Higher
 19 Education Act of 1965 (20 U.S.C. 1094(c)) is amended
 20 by adding at the end the following:

21 “(8) Notwithstanding any other provisions of this
 22 title, the Secretary shall prescribe such regulations as may
 23 be necessary to provide for a requirement that an eligible
 24 institution, in completing the compliance audit in accord-

1 ance with paragraph (1)(A), shall submit a copy of the
 2 written policy described in subsection (a)(30).”.

3 (c) DUTIES OF EDUCATION STATISTICS CENTER.—

4 (1) HIGHER EDUCATION ACT OF 1965.—Section
 5 132(i)(1) of the Higher Education Act of 1965 (20
 6 U.S.C. 1015a(i)(1)) is amended by adding at the
 7 end the following:

8 “(AA) With respect to students who are
 9 applicable children (as described in section
 10 170(f)(19)(F) of the Internal Revenue Code) of
 11 any person who has made a direct or indirect
 12 donation to the institution or a related organi-
 13 zation (as defined in section 170(f)(19)(G)(ii)
 14 of such Code) during the 6-year period ending
 15 with the calendar year in which the student ap-
 16 plied—

17 “(i) the total number of such students
 18 who applied to the institution;

19 “(ii) the total number of such stu-
 20 dents who were admitted by the institu-
 21 tion; and

22 “(iii) the total number of such stu-
 23 dents who enrolled at the institution.”.

24 (2) EDUCATION SCIENCES REFORM ACT OF
 25 2002.—Section 153(a)(1) of the Education Sciences

1 Reform Act of 2002 (20 U.S.C. 9543(a)(1)) is
2 amended—

3 (A) in subparagraph (N), by striking
4 “and” after the semicolon;

5 (B) in subparagraph (O), by inserting
6 “and” after the semicolon; and

7 (C) by adding at the end the following:

8 “(P) with respect to students who are ap-
9 plicable children (as described in section
10 170(f)(19)(F) of the Internal Revenue Code) of
11 any person who has made a direct or indirect
12 donation to the institution or a related organi-
13 zation (as defined in section 170(f)(19)(G)(ii)
14 of such Code) during the 6-year period ending
15 with the calendar year in which the student ap-
16 plied—

17 “(i) the total number of such students
18 who applied to the institution;

19 “(ii) the total number of such stu-
20 dents who were admitted by the institu-
21 tion; and

22 “(iii) the total number of such stu-
23 dents who enrolled at the institution;”.

1 (d) INSTITUTIONAL DISSEMINATION ACTIVITIES.—

2 Section 485(a) of the Higher Education Act of 1965 (20

3 U.S.C. 1092(a)) is amended—

4 (1) in subparagraph (U), by striking “and”
5 after the semicolon;

6 (2) in subparagraph (V), by striking the period
7 and inserting a semicolon; and

8 (3) by adding at the end the following:

9 “(W) the institution’s written policy that pro-
10 hibits as a factor in admissions decisions the consid-
11 eration of—

12 “(i) direct or indirect donations from an
13 applicant or family member of an applicant;
14 and

15 “(ii) the financial ability of an applicant or
16 a family member of an applicant to make a do-
17 nation; and

18 “(X) with respect to students who are applica-
19 ble children (as described in section 170(f)(19)(F) of
20 the Internal Revenue Code) of any person who has
21 made a direct or indirect donation to the institution
22 or a related organization (as defined in section
23 170(f)(19)(G)(ii) of such Code) during the 6-year
24 period ending with the calendar year in which the
25 student applied—

1 “(i) the total number of such students who
2 applied to the institution;

3 “(ii) the total number of such students
4 who were admitted by the institution; and

5 “(iii) the total number of such students
6 who enrolled at the institution.”.

7 (e) INFORMATION INCLUDED ON TAX INFORMATION
8 RETURNS.—

9 (1) IN GENERAL.—Section 6033 of the Internal
10 Revenue Code of 1986 is amended by redesignating
11 subsection (n) as subsection (o) and by inserting
12 after subsection (m) the following new subsection:

13 “(n) ADDITIONAL INFORMATION REQUIRED FOR IN-
14 STITUTIONS OF HIGHER EDUCATION.—Every organiza-
15 tion which is an institution of higher education (as defined
16 in section 101 of the Higher Education Act of 1965) and
17 required to file a return under subsection (a) shall include
18 with such return—

19 “(1) a copy of the written policy described in
20 section 487(a)(30) of Higher Education Act of
21 1965, and

22 “(2) the information described in section
23 132(i)(1)(AA) of such Act.”.

24 (2) EFFECTIVE DATE.—The amendments made
25 by paragraph (1) shall apply to returns filed for tax-

- 1 able years beginning 1 year or more after the date
- 2 of the enactment of this Act.

