

116TH CONGRESS
1ST SESSION

S. 634

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

FEBRUARY 28, 2019

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 Finance

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”.

1 **SEC. 2. PURPOSE.**

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

7 **TITLE I—AMENDMENTS TO THE**
8 **INTERNAL REVENUE CODE**
9 **OF 1986**

10 **SEC. 101. REFERENCES TO THE INTERNAL REVENUE CODE**
11 **OF 1986.**

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

18 **SEC. 102. TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE**
19 **SCHOLARSHIP-GRANTING ORGANIZATIONS**
20 **AND ELIGIBLE WORKFORCE TRAINING ORGA-**
21 **NIZATIONS.**

22 (a) CREDIT FOR INDIVIDUALS.—

23 (1) IN GENERAL.—Subpart A of part IV of sub-
24 chapter A of chapter 1 is amended by adding after
25 section 25D the following new section:

1 **“SEC. 25E. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-**
 2 **GRANTING ORGANIZATIONS AND ELIGIBLE**
 3 **WORKFORCE TRAINING ORGANIZATIONS.**

4 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
 5 dividual, there shall be allowed as a credit against the tax
 6 imposed by this chapter for the taxable year an amount
 7 equal to the sum of any qualified contributions made by
 8 the taxpayer during the taxable year.

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

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

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

18 “(2) QUALIFIED EXPENSE.—The term ‘quali-
 19 fied expense’ means any educational expense that
 20 is—

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

24 “(B) for the secondary education compo-
 25 nent of an individual elementary or secondary
 26 student’s career and technical education, as de-

1 fined by section 3(5) of the Carl D. Perkins Ca-
 2 reer and Technical Education Act of 2006 (20
 3 U.S.C. 2302(5)), or

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-
 9 amination costs relating to portable certificates
 10 or credentials, or industry recognized certifi-
 11 cation or credentialing programs.

12 “(3) ELIGIBLE SCHOLARSHIP-GRANTING ORGA-
 13 NIZATION.—The term ‘eligible scholarship-granting
 14 organization’ means—

15 “(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

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

4 “(iii) a State reports to the Secretary
5 of Education as an eligible scholarship-
6 granting organization pursuant to section
7 201(c)(5)(B) of the Education Freedom
8 Scholarships and Opportunity Act,

9 “(iv) allocates at least 90 percent of
10 qualified contributions to qualifying schol-
11 arships for qualified expenses, and

12 “(v) provides scholarships to—

13 “(I) more than 1 eligible student,

14 “(II) more than 1 eligible family,

15 and

16 “(III) different eligible students
17 attending more than one education
18 provider, or

19 “(B) an organization that—

20 “(i) is described in section 501(c)(3)
21 and exempt from taxation under section
22 501(a), and

23 “(ii) pursuant to State law, was able,
24 as of the date of the enactment of the
25 Education Freedom Scholarships and Op-

portunity 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-
 ganization—

“(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 cre-

1 dentialing programs, including preparation
2 and examination costs,

3 “(iii) which is in compliance with ap-
4 plicable State laws,

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

11 “(v) which satisfies the requirements
12 described in clauses (iv) and (v) of para-
13 graph (3)(A).

14 “(B) POTENTIAL ELIGIBLE WORKFORCE
15 TRAINING ORGANIZATIONS.—Eligible workforce
16 training organizations may include, but are not
17 limited to, organizations such as the following
18 (provided that such organizations satisfy the re-
19 quirements under subparagraph (A)):

20 “(i) Community colleges.

21 “(ii) Workforce training programs (as
22 defined by the applicable State workforce
23 agency).

24 “(iii) Organizations which provide—

1 “(I) career and technical edu-
 2 cation, or

3 “(II) training or apprenticeships,
 4 including, but not limited to, training
 5 or apprenticeships operated by a col-
 6 lective bargaining organization or that
 7 provide industry recognized certifi-
 8 cations or credentials.

9 “(iv) Community organizations that
 10 provide training that results in a certifi-
 11 cation.

12 “(5) QUALIFYING SCHOLARSHIP.—The term
 13 ‘qualifying scholarship’ means—

14 “(A) a scholarship granted by an eligible
 15 scholarship-granting organization to an indi-
 16 vidual elementary or secondary student, or

17 “(B) a scholarship granted by an eligible
 18 workforce training organization as a scholarship
 19 to a secondary or postsecondary student for the
 20 purpose of vocational education and training,
 21 workforce development, obtaining portable cer-
 22 tificates or credentials, or industry recognized
 23 certification or credentialing programs, includ-
 24 ing preparation and examination costs,

25 under this section.

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

8 “(d) RULES OF CONSTRUCTION.—

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

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

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

23 “(A) Nothing in this Act shall be con-
 24 strued to permit, allow, encourage, or authorize
 25 any Federal control over any aspect of any pri-

1 vate, religious, or home education provider,
2 whether or not a home education provider is
3 treated as a private school or home school
4 under State law. This Act shall not be con-
5 strued to exclude private, religious, or home
6 education providers from participation in pro-
7 grams or services under this Act.

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

17 “(C) No participating State or entity act-
18 ing on behalf of a State shall exclude, discrimi-
19 nate against, or otherwise disadvantage any
20 education provider with respect to programs or
21 services under this Act based in whole or in
22 part on the provider’s religious education char-
23 acter or affiliation, including religiously or mis-
24 sion-based policies or practices.

1 “(4) PARENTAL RIGHTS TO USE SCHOLAR-
 2 SHIPS.—No participating State or entity acting on
 3 behalf of a State shall disfavor or discourage the use
 4 of such scholarships for the purchase of elementary
 5 and secondary or workforce training education serv-
 6 ices, including those services provided by private or
 7 nonprofit entities, such as faith-based providers.

8 “(5) STATE AND LOCAL AUTHORITY.—Nothing
 9 in this section or section 45T shall be construed to
 10 modify a State or local government’s authority and
 11 responsibility to fund education.

12 “(e) LIMITATIONS.—

13 “(1) TAX LIABILITY.—No credit allowed under
 14 this section or section 45T shall exceed the tax-
 15 payer’s Federal income tax liability for the taxable
 16 year.

17 “(2) PROHIBITIONS.—A taxpayer is prohibited
 18 from selling or transferring any portion of a tax
 19 credit allowed under this section or section 45T.

20 “(3) DENIAL OF DOUBLE BENEFIT.—The Sec-
 21 retary shall prescribe such regulations or other guid-
 22 ance to ensure that the sum of the tax benefits pro-
 23 vided by Federal, State, or local law for a qualified
 24 contribution receiving a Federal tax credit in any
 25 taxable year shall not exceed the sum of the quali-

1 fied contributions made by the taxpayer for the tax-
2 able year.

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

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

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

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

“Sec. 25E. Contributions to eligible scholarship-granting organizations and eli-
gible workforce training organizations.”.

19 (b) CREDIT FOR CORPORATIONS.—

20 (1) IN GENERAL.—Subpart D of part IV of
21 subchapter A of chapter 1 is amended by adding at
22 the end the following new section:

1 **“SEC. 45T. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-**
 2 **GRANTING ORGANIZATIONS AND ELIGIBLE**
 3 **WORKFORCE TRAINING ORGANIZATIONS.**

4 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-
 5 tion 38, in the case of a domestic corporation, there shall
 6 be allowed as a credit against the tax imposed by this
 7 chapter for the taxable year an amount equal to the sum
 8 of any qualified contributions (as defined in section
 9 25E(c)(1)) made by such corporation taxpayer during the
 10 taxable year.

11 “(b) AMOUNT OF CREDIT.—The credit allowed under
 12 subsection (a) for any taxable year shall not exceed 5 per-
 13 cent of the taxable income (as defined in section
 14 170(b)(2)(D)) of the domestic corporation for such taxable
 15 year.

16 “(c) ADDITIONAL PROVISIONS.—For purposes of this
 17 section, any qualified contributions made by a domestic
 18 corporation shall be subject to the provisions of section
 19 25E, to the extent applicable.

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

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

25 (A) by striking “plus” at the end of para-
 26 graph (31),

1 (B) by striking the period at the end of
 2 paragraph (32) and inserting “, plus”, and

3 (C) by adding at the end the following new
 4 paragraph:

5 “(33) the credit for qualified contributions de-
 6 termined under section 45T(a).”.

7 (3) CLERICAL AMENDMENT.—The table of sec-
 8 tions for subpart D of part IV of subchapter A of
 9 chapter 1 is amended by adding at the end the fol-
 10 lowing new item:

“Sec. 45T. Contributions to eligible scholarship-granting organizations and eli-
 gible workforce training organizations.”.

11 **TITLE II—EDUCATION FREEDOM** 12 **SCHOLARSHIPS AND OPPOR-** 13 **TUNITY ACT WEB PORTAL** 14 **AND ADMINISTRATION**

15 **SEC. 201. EDUCATION FREEDOM SCHOLARSHIPS AND OP-** 16 **PORTUNITY ACT WEB PORTAL AND ADMINIS-** 17 **TRATION.**

18 (a) IN GENERAL.—The Secretary of Education shall,
 19 in coordination with the Secretary of the Treasury and
 20 the Secretary of Labor, establish, host, and maintain a
 21 Web portal that—

22 (1) lists all scholarship-granting organizations
 23 and workforce training organizations that are eligi-

1 ble under section 25E or 45T of the Internal Rev-
2 enue Code of 1986;

3 (2) enables a taxpayer to make a qualifying
4 contribution to one or more eligible scholarship-
5 granting organizations and eligible workforce train-
6 ing organizations and to immediately obtain both a
7 pre-approval of a tax credit for that contribution
8 and a receipt for tax filings;

9 (3) provides information about the tax benefits
10 of the provisions of the Education Freedom Scholar-
11 ships and Opportunity Act under the Internal Rev-
12 enue Code of 1986; and

13 (4) enables a State to submit and update infor-
14 mation about its programs and its eligible scholar-
15 ship-granting organizations and eligible workforce
16 training organizations for informational purposes
17 only, including information on—

18 (A) student eligibility;

19 (B) allowable educational expenses;

20 (C) the types of allowable education pro-
21 viders;

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

24 (E) the percentage of total contributions
25 the organization awards in a calendar year.

1 (b) NONPORTAL CONTRIBUTIONS.—A taxpayer may
 2 opt to make a contribution directly to an eligible scholar-
 3 ship-granting organization or an eligible workforce train-
 4 ing organization, instead of through the Web portal de-
 5 scribed in subsection (a), provided that the taxpayer, or
 6 the eligible scholarship-granting organization or eligible
 7 workforce training organization on behalf of the taxpayer,
 8 applies for, and receives pre-approval for a tax credit from
 9 the Secretary of Education in coordination with the Sec-
 10 retary of the Treasury.

11 (c) NATIONAL AND STATE CAPS ON CREDITS.—

12 (1) NATIONAL CAP.—There is a cap of
 13 \$10,000,000,000 on the sum of the contributions
 14 that qualify for a credit under section 25E and sec-
 15 tion 45T of the Internal Revenue Code of 1986 for
 16 each calendar year, of which—

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

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

23 (2) ALLOCATION OF CAP.—

1 (A) INITIAL ALLOCATIONS.—For each cal-
2 endar year, the Secretary of Education, in co-
3 ordination with the Secretary of Labor, shall—

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

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

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

14 (aa) an amount that bears
15 the same relationship to 20 per-
16 cent of such remaining amount
17 as the number of individuals
18 aged 5 through 17 in the State,
19 as determined by the Secretary of
20 Education on the basis of the
21 most recent satisfactory data,
22 bears to the number of those in-
23 dividuals in all such States, as so
24 determined; and

1 (bb) an amount that bears
2 the same relationship to 80 per-
3 cent of such remaining amount
4 as the number of individuals
5 aged 5 through 17 from families
6 with incomes below the poverty
7 line in the State, as determined
8 by the Secretary of Education, on
9 the basis of the most recent sat-
10 isfactory data, bears to the num-
11 ber of those individuals in all
12 such States, as so determined;
13 and

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

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

22 (II) next, allocate the remaining
23 amount among the participating
24 States by allocating to each State an
25 amount determined through a system,

1 as established and maintained by the
 2 Secretary of Labor, that accurately
 3 reflects demand and potential quali-
 4 fied participants for apprenticeships
 5 and workforce training within that
 6 State.

7 (B) MINIMUM ALLOCATION.—Notwith-
 8 standing subparagraph (A), no State receiving
 9 an allotment under this section may receive less
 10 than one-half of one percent of the amount al-
 11 lotted for a fiscal year.

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

15 (i) IN GENERAL.—Not later than the
 16 end of the fifth year of the program or one
 17 year after the end of the first fiscal year
 18 for which the total amount of credits
 19 claimed under section 25E and section
 20 45T of the Internal Revenue Code of 1986
 21 for qualified contributions to eligible schol-
 22 arship-granting organizations is
 23 \$2,500,000,000 or more, whichever comes
 24 first, the Secretary of Education shall, by
 25 regulation, provide for an alternative allo-

1 cation method for the amount described in
2 paragraph (1)(A) that shall take effect be-
3 ginning with the first fiscal year after the
4 regulation takes effect.

5 (ii) ALTERNATIVE ALLOCATION METH-
6 OD.—The alternative allocation method de-
7 scribed in clause (i) shall be expressed as
8 a formula based on a combination of the
9 following data for each State, as reported
10 by the State to the Secretary of Education:

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

20 (II) The total amount of all ele-
21 mentary and secondary scholarships
22 awarded through a State program
23 that is financed through State tax-
24 credited donations or appropriations
25 compared to the total amount of cur-

1 rent State and local expenditures for
2 free public education in the State.

3 (iii) ALLOCATION FORMULA.—For any
4 fiscal year to which clause (i) applies, the
5 Secretary of Education shall—

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

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

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

17 (iv) INELIGIBILITY.—For any fiscal
18 year to which clause (i) applies, a State
19 that does not provide the Secretary of
20 Education with information described in
21 clause (ii) is not eligible to receive an allo-
22 cation through the alternative allocation
23 method under clause (ii).

24 (3) ALLOWABLE PARTNERSHIPS.—A State may
25 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(c) 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(c)(3)(B) of

1 the Internal Revenue Code of 1986)
 2 located in such State.

3 (ii) UNCLAIMED CREDITS.—On or
 4 after April 1 of any applicable year, the
 5 Secretary of Education may reallocate, to
 6 1 or more other States that have eligible
 7 scholarship-granting organizations and eli-
 8 gible workforce training organizations in
 9 the States, without regard to paragraph
 10 (2), the allocation of a State for which the
 11 State’s allocation has not been claimed.

12 (d) DEFINITIONS.—The definitions of terms in sec-
 13 tion 25E(c) of the Internal Revenue Code of 1986 apply
 14 to those terms as used in this title.

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

