

117TH CONGRESS
1ST SESSION

H. R. 889

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2021

Mr. OWENS (for himself, Mr. ALLEN, Mr. ADERHOLT, Mrs. LESKO, Mr. LAMALFA, Mr. LAMBORN, Mr. GAETZ, Mr. POSEY, Mr. WEBSTER of Florida, Mr. HICE of Georgia, Mr. BAIRD, Mr. GUTHRIE, Mr. MOOLENAAR, Mr. GUEST, Ms. FOXX, Mr. BISHOP of North Carolina, Mr. BUDD, Mr. CHABOT, Mr. JORDAN, Mr. LATTI, Mr. STIVERS, Mr. PERRY, Mr. KELLER, Mr. JOYCE of Pennsylvania, Mr. WILSON of South Carolina, Mr. NORMAN, Mr. RICE of South Carolina, Mr. DESJARLAIS, Mr. JACKSON, Mr. WEBER of Texas, Mr. CLINE, and Mr. GALLAGHER) 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

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 elementary and secondary 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 “Education Freedom
3 Scholarships and Opportunity Act”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to encourage individual
6 and corporate taxpayers to contribute to scholarships for
7 individual elementary and secondary students through eli-
8 gible scholarship-granting organizations, as identified by
9 States.

10 **TITLE I—AMENDMENTS TO THE**
11 **INTERNAL REVENUE CODE**
12 **OF 1986**

13 **SEC. 101. REFERENCES TO THE INTERNAL REVENUE CODE**
14 **OF 1986.**

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

21 **SEC. 102. TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE**
22 **SCHOLARSHIP-GRANTING ORGANIZATIONS.**

23 (a) CREDIT FOR INDIVIDUALS.—

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

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

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

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

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

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

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

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

22 “(B) for the secondary education compo-
 23 nent of an individual elementary or secondary
 24 student’s career and technical education, as de-
 25 fined by section 3(5) of the Carl D. Perkins Ca-

1 reer and Technical Education Act of 2006 (20
2 U.S.C. 2302(5)).

3 “(3) SECRETARY.—The term ‘Secretary’ means
4 the Secretary of Education.

5 “(4) ELIGIBLE SCHOLARSHIP-GRANTING ORGA-
6 NIZATION.—The term ‘eligible scholarship-granting
7 organization’ means—

8 “(A) an organization that—

9 “(i) is described in section 501(c)(3)
10 and exempt from taxation under section
11 501(a);

12 “(ii) provides qualifying scholarships
13 to individual elementary and secondary
14 students who—

15 “(I) reside in the State in which
16 the eligible scholarship-granting orga-
17 nization is recognized; or

18 “(II) in the case of the Bureau of
19 Indian Education, are members of a
20 federally recognized tribe;

21 “(iii) a State reports to the Secretary
22 as an eligible scholarship-granting organi-
23 zation under subsection (e)(5)(B);

1 “(iv) allocates at least 90 percent of
2 qualified contributions to qualifying schol-
3 arships; and

4 “(v) provides scholarships to—

5 “(I) more than 1 eligible student;

6 “(II) more than 1 eligible family;

7 and

8 “(III) different eligible students

9 attending more than one education

10 provider; or

11 “(B) an organization that—

12 “(i) is described in section 501(c)(3)

13 and exempt from taxation under section

14 501(a); and

15 “(ii) pursuant to State law, was able,

16 as of the date of the enactment of the

17 Education Freedom Scholarships and Op-

18 portunity Act, to receive contributions that

19 are eligible for a State tax credit if such

20 contributions are used by the organization

21 to provide scholarships to individual ele-

22 mentary and secondary students, including

23 scholarships for attending private schools.

24 “(5) QUALIFYING SCHOLARSHIP.—The term

25 ‘qualifying scholarship’ means a scholarship granted

1 by an eligible scholarship-granting organization to
2 an individual elementary or secondary student under
3 this section or section 45T.

4 “(6) STATE.—The term ‘State’ means each of
5 the 50 States, the District of Columbia, the Com-
6 monwealth of Puerto Rico, the outlying areas (as de-
7 fined in section 1121(c) of the Elementary and Sec-
8 ondary Education Act of 1965), and the Department
9 of the Interior (acting through the Bureau of Indian
10 Education).

11 “(d) RULES OF CONSTRUCTION.—

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

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

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

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

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

19 “(C) No participating State or entity act-
20 ing on behalf of a State shall exclude, discrimi-
21 nate against, or otherwise disadvantage any
22 education provider with respect to programs or
23 services under this Act based in whole or in
24 part on the provider’s religious character or af-

1 filiation, including religiously or mission-based
2 policies or practices.

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

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

14 “(e) LIMITATIONS.—

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

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

22 “(3) DENIAL OF DOUBLE BENEFIT.—The Sec-
23 retary of the Treasury shall prescribe such regula-
24 tions or other guidance to ensure that the sum of
25 the tax benefits provided by Federal, State, or local

1 law for a qualified contribution receiving a Federal
 2 tax credit in any taxable year shall not exceed the
 3 sum of the qualified contributions made by the tax-
 4 payer for the taxable year.

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

10 “(g) ELECTION.—This section shall apply to a tax-
 11 payer for a taxable year only if the taxpayer elects to have
 12 this section or section 45T apply for such taxable year.

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

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

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

21 (b) CREDIT FOR CORPORATIONS.—

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

1 **“SEC. 45T. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-**
2 **GRANTING ORGANIZATIONS.**

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

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

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

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

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

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

25 (C) by adding at the end the following new
26 paragraph:

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

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

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

7 **TITLE II—EDUCATION FREEDOM**
 8 **SCHOLARSHIPS WEB PORTAL**
 9 **AND ADMINISTRATION**

10 **SEC. 201. EDUCATION FREEDOM SCHOLARSHIPS WEB POR-**
 11 **TAL AND ADMINISTRATION.**

12 (a) IN GENERAL.—The Secretary of Education shall,
 13 in coordination with the Secretary of the Treasury, estab-
 14 lish, host, and maintain a web portal that—

15 (1) lists all scholarship-granting organizations
 16 that are eligible under section 25E or 45T of the In-
 17 ternal Revenue Code of 1986;

18 (2) enables a taxpayer to make a qualifying
 19 contribution to one or more eligible scholarship-
 20 granting organizations and to immediately obtain
 21 both a pre-approval of a tax credit for that contribu-
 22 tion and a receipt for tax filings;

23 (3) provides information about the tax benefits
 24 of Education Freedom Scholarships under the Inter-
 25 nal Revenue Code of 1986; and

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

5 (A) student eligibility;

6 (B) allowable educational expenses;

7 (C) the types of allowable education pro-
8 viders;

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

11 (E) the percentage of total contributions
12 the organization awards in a calendar year.

13 (b) NONPORTAL CONTRIBUTIONS.—A taxpayer may
14 opt to make a contribution directly to an eligible scholar-
15 ship-granting organization, instead of through the web
16 portal described in subsection (a), provided that the tax-
17 payer, or the eligible scholarship-granting organization on
18 behalf of the taxpayer, applies for, and receives pre-ap-
19 proval for a tax credit from the Secretary of Education
20 in coordination with the Secretary of the Treasury.

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

22 (1) NATIONAL CAP.—There is a cap of
23 \$5,000,000,000 on the sum of the contributions that
24 qualify for a credit under section 25E and section

1 45T of the Internal Revenue Code of 1986 for each
2 calendar year.

3 (2) ALLOCATION OF CAP.—

4 (A) INITIAL ALLOCATIONS.—For each cal-
5 endar year, the Secretary shall—

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

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

13 (I) an amount that bears the
14 same relationship to 20 percent of
15 such remaining amount as the num-
16 ber of individuals aged 5 through 17
17 in the State, as determined by the
18 Secretary on the basis of the most re-
19 cent satisfactory data, bears to the
20 number of those individuals in all
21 such States, as so determined; and

22 (II) an amount that bears the
23 same relationship to 80 percent of
24 such remaining amount as the num-
25 ber of individuals aged 5 through 17

1 from families with incomes below the
2 poverty line in the State, as deter-
3 mined by the Secretary, on the basis
4 of the most recent satisfactory data,
5 bears to the number of those individ-
6 uals in all such States, as so deter-
7 mined.

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

13 (C) ALTERNATIVE ALLOCATION.—

14 (i) IN GENERAL.—Not later than the
15 end of the fifth year of the program or one
16 year after the end of the first fiscal year
17 for which the total amount of credits
18 claimed under section 25E and section
19 45T of the Internal Revenue Code of 1986
20 is \$2,500,000,000 or more, whichever
21 comes first, the Secretary shall, by regula-
22 tion, provide for an alternative allocation
23 method that shall take effect beginning
24 with the first fiscal year after the regula-
25 tion takes effect.

1 (ii) ALTERNATIVE ALLOCATION METH-
2 OD.—The alternative allocation method
3 shall be expressed as a formula based on
4 a combination of the following data for
5 each State, as reported by the State to the
6 Secretary:

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

16 (II) The total amount of all ele-
17 mentary and secondary scholarships
18 awarded through a State program
19 that is financed through State tax-
20 credited donations or appropriations
21 compared to the total amount of cur-
22 rent State and local expenditures for
23 free public education in the State.

1 (iii) ALLOCATION FORMULA.—For any
 2 fiscal year to which clause (i) applies, the
 3 Secretary shall—

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

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

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

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

22 (3) ALLOWABLE PARTNERSHIPS.—A State may
 23 choose to administer the allocation it receives under
 24 paragraph (2) in partnership with 1 or more States,
 25 provided that the eligible scholarship-granting orga-

1 nizations in each partner State serve students who
2 reside in all States in the partnership.

3 (4) TOTAL ALLOCATION.—A State’s allocation,
4 for any fiscal year, is the sum of the amount deter-
5 mined for it under subparagraphs (A) and (B) of
6 paragraph (2), except as provided in paragraph
7 (2)(C).

8 (5) ALLOCATION AND ADJUSTMENTS.—

9 (A) INITIAL ALLOCATION TO STATES.—No
10 later than November 1 of the year preceding a
11 year for which there is a national cap on credits
12 under paragraph (1) (hereafter in this section,
13 the “applicable year”), or as early as prac-
14 ticable with respect to the first year, the Sec-
15 retary shall announce the State allocations
16 under paragraph (2) for the applicable year.

17 (B) LIST OF ELIGIBLE SCHOLARSHIP-
18 GRANTING ORGANIZATIONS.—No later than
19 January 1 of each applicable year, or as early
20 as practicable with respect to the first year,
21 each State shall provide the Secretary a list of
22 eligible scholarship-granting organizations de-
23 scribed in section 25E(c)(4)(A) of the Internal
24 Revenue Code of 1986, including a certification
25 that the entity submitting the list on behalf of

1 the State has the authority to perform this
2 function. Neither this Act nor any other Fed-
3 eral law shall be construed as limiting the enti-
4 ties that may submit the list on behalf of a
5 State.

6 (C) REALLOCATION OF UNCLAIMED CRED-
7 ITS.—The Secretary shall reallocate a State’s
8 allocation to other States, in accordance with
9 paragraph (2), if the State—

10 (i) chooses not to identify scholarship-
11 granting organizations under subparagraph
12 (B) in any applicable year; or

13 (ii) does not have an existing eligible
14 scholarship-granting organization (as de-
15 fined in section 25E(c)(4)(B) of the Inter-
16 nal Revenue Code of 1986).

17 (D) REALLOCATION.—On or after April 1
18 of any applicable year, the Secretary may re-
19 allocate, to 1 or more other States that have el-
20 igible scholarship-granting organizations in the
21 States, without regard to paragraph (2), the al-
22 location of a State for which the State’s alloca-
23 tion has not been claimed.

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

○