

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual
collections.

Collection: Barr, William Files
Folder Title: Tuition Tax Credit Bill (9)
Box: 13

To see more digitized collections visit:
<https://reaganlibrary.gov/archives/digital-library>
To see all Ronald Reagan Presidential Library
inventories visit:
<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at:
reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

WITHDRAWAL SHEET

Ronald Reagan Library

Collection: BARR, WILLIAM: Files

Archivist: cas/cas

File Folder: [Tuition Tax Credits] ~~9 of 14~~ ~~OA 9094~~ *Box 13*
Bill (9)

Date: 9/18/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Barr to Edwin Meese 1 p.	9/16/82	<i>DS/CS</i> <i>10/5/00</i>

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
 - P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
 - P-3 Release would violate a Federal statute [(a)(3) of the PRA].
 - P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
 - P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
 - P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

—
THE WHITE HOUSE
WASHINGTON

File - TTC

W/changes as of 9/14

"(d) Tax Credit Not Allowed for Amounts Paid to Racially Discriminatory Institutions. --

(1) Racial Discrimination Prohibited. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution that is found, pursuant to the procedures set forth in this sub-section, to follow a racially discriminatory policy.

"(2) Definition. -- For purposes of this subsection, an educational institution follows a 'racially discriminatory policy' if it refuses, on account of race --

(A) to admit applicants as students;

(B) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy shall not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(3) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, and such declaratory judgment is not stayed, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year in which the declaratory judgment under section 7408 was entered against the educational institution, and

"(B) in succeeding calendar years until such time as an order modifying the declaratory judgment and reinstating credits is entered pursuant to subsection (f) of section 7408.

"(4) Required Annual Statements. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution during a calendar year unless, at the end of such calendar year, the educational institution files with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) a statement, subject to the penalties for perjury, that

(A) attests that such institution has complied with the requirements of sub-section (e)(1)(iv) during such calendar year;

(B) declares that such institution has not followed a racially discriminatory policy during such calendar year; and

(C) indicates whether a declaratory judgment has been entered against such institution under section 7408 and has not been vacated pursuant to sub-section (f) of section 7408.

On or before January 31 of the calendar year following the calendar year to which the statement relates, the institution shall furnish a copy of the statement to all persons who paid

tuition expenses to the institution in the calendar year to which the statement relates. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year unless the taxpayer attaches to the return on which the taxpayer claims the credit with respect to such calendar year a copy of the statement specified in this paragraph.

(5) Enforcement Responsibility. -- Under this section, the Attorney General has exclusive authority to investigate and to determine whether an educational institution is following a racially discriminatory policy and to commence a declaratory judgment action under section 7408. Upon request of the Attorney General or upon his own motion, the Secretary shall supply the Attorney General with all information in the possession of the Secretary relevant to such investigation, determination, or action.

"(e) Definitions. -- For purposes of this section --

"(1) Educational Institution. -- The term 'educational institution' means a school that

"(i) provides a full-time program of elementary or secondary education;

"(ii) is a privately operated, not-for-profit, day or residential school;

"(iii) is exempt from taxation under section 501(a) as an organization described in section

501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply; and

"(iv) to the extent it otherwise publishes by-laws, advertisements, admission application forms and other such publications, includes therein (as the Secretary shall by regulation prescribe) a statement that it does not discriminate against student applicants or students on the basis of race.

"(2) Tuition Expenses. -- The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses;

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; or

"(D) education above the twelfth-grade level."

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY
DISCRIMINATORY POLICIES OF SCHOOLS.

"(a) In General. -- Whenever the Attorney General receives a petition in accordance with paragraph (b), the Attorney General is authorized and directed, upon finding good cause to believe that an educational institution is following a racially discriminatory policy, to bring an action against the educational institution in the United States district court in the district in which the educational institution is located, seeking a declaratory judgment that the educational institution has followed a racially discriminatory policy.

"(b) Petition. -- Any person may file a petition under sub-section (a). The petition must allege with specificity that

(1) a named educational institution has, pursuant to a racially discriminatory policy, discriminated against a named student applicant or student within one year preceding the filing of the petition; or

(2) the educational institution made a statement, within one year preceding the filing of the petition, communicating an intent to follow a racially discriminatory policy.

"(c) Notification and Opportunity to Comment. -- Upon receipt of the petition, the Attorney General shall promptly notify the educational institution in writing of such petition and the allegations contained therein. Before filing an action, the Attorney General shall give the institution a fair opportunity to comment on allegations made against it and to show that a racially discriminatory policy does not exist or has been

abandoned. Prior to and in lieu of filing an action, the Attorney General may, at his discretion, enter into a settlement agreement with the educational institution if he finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy. No petition need be filed for the Attorney General to initiate action to enforce the terms of such settlement agreement.

"(d) Required Showing. -- In an action under this section, no finding that a school is following a racially discriminatory policy shall be made unless the Attorney General establishes

(1) that the institution has, pursuant to such policy, taken an action discriminating against a student applicant or student within the two years preceding commencement of the action; or

(2) that the institution has, within the two years preceding commencement of the action, made a statement communicating an intent to follow a racially discriminatory policy against student applicants or students; or

(3) that the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

"(e) Reinstatement of Credits. --

(1) If a district court enters a declaratory judgment against an educational institution under this section, the district court shall retain jurisdiction of the case. After

one (1) year has elapsed from the date of judgment, and at any time thereafter, the educational institution may file with the district court a motion to reinstate credits. Such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has changed its previous racially discriminatory policy;

(B) describing with specificity the ways in which the educational institution has taken reasonable steps to communicate its policy of non-discrimination to students, to faculty, and school administrators, and to the public in the area it serves;

(C) averring that the educational institution has not discriminated against an applicant or student pursuant to a racially discriminatory policy during the preceding year; and

(D) averring that the educational institution has complied with the requirements of section 44 H(e)(1)(iv).

(2) When an educational institution has filed a motion complying with paragraph (1), the court shall enter an order modifying the prior judgment against the institution and reinstating credits for tuition payments to the educational institution, unless the Attorney General establishes that

(A) the institution has not in fact stopped following its previous discriminatory policy;

(B) the institution has discriminated against an

applicant or student pursuant to a racially discriminatory policy within the preceding year;

(C) the institution has made statements communicating an intent to follow a racially discriminatory policy within the preceding year; or

(D) the institution has not, in fact, complied with the publications requirements of sub-paragraphs (B) and (D) of paragraph (1).

"(f) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court shall award the institution costs and attorney's fees in such action.

"(g) Definitions. -- When used in this section, the terms 'educational institution' and 'racially discriminatory policy' shall have the same meaning as assigned to such terms in section 44H."

"(h) Statute of Limitations. -- If, for any reason, a judgment of the district court against an educational institution is stayed and is subsequently affirmed on appeal, credits allowed for tuition payments to such institution for taxable years dating back to the year in which the district court judgment was entered shall be disallowed.

"(1) The period for assessing a deficiency attributable to such disallowance of a credit shall not expire before the expiration of 3 years from the date of the appellate decision affirming the district court judgment. Any such deficiency may be assessed before the expiration of

such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(2) If a district court judgment against an educational institution is reversed on appeal, taxpayers for whom credits have been precluded by such judgment shall be entitled to file amended returns for tax years dating back to and including the year in which the district court judgment was entered.

GOVERNMENT ENFORCEMENT OPTION

(d) DEFINITIONS.

(1) ELIGIBLE EDUCATIONAL INSTITUTION.

(A) The term 'eligible educational institution' means an elementary or secondary school as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which

(i) is exempt from taxation under 501(a) as an organization described in section 501(c)(3), and

(ii) has not during the calendar year for which a tax credit is claimed or the two immediately preceding calendar years been declared, in an action brought by the United States pursuant to this section, to follow a 'racially discriminatory policy'.

(B) (i) For purposes of this Act, an institution follows a 'racially discriminatory policy' if: (a) it refuses to admit applicants as students on account of race; (b) it excludes students, on account of race, from the rights, privileges, programs, and activities generally made available to students by that institution; or (c) it discriminates against students, on account of race, in administering its scholarship, loan, athletic or other programs.

(ii) A 'racially discriminatory policy' does not include: (a) using a bona fide plan to increase enrollment of a disadvantaged minority group, provided that no institution shall

be required to use such a plan to be eligible under this section; (b) granting any privilege, preference or priority to members of, or adherents to, a particular religious organization or belief, or limiting admission to such members or adherents, provided that no such privilege, preference, priority or limitation is based upon race or upon a belief that requires discrimination on the basis of race; (c) failing to pursue or achieve any racial quota, proportion or representation in the student body.

(iii) The term 'race' shall include color or national origin.

(C) (i) To enforce this section, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in paragraph (B)(i) of this subsection, is authorized, upon finding good cause, to bring an action against an institution in the federal district court in the district in which such institution is located, seeking declaratory judgment that the institution is following a 'racially discriminatory policy' and has discriminated against the person filing the petition under such policy.

(ii) The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it. An

action may be filed by the Attorney General no later than two years after receiving the petition.

(iii) An institution is ineligible during the entire calendar year in which a judicial judgment that the institution follows a 'racially discriminatory policy' becomes final and during the two immediately succeeding calendar years.

(iv) A judicial judgment that an institution follows a 'racially discriminatory policy' as described in paragraph (B)(i) of this subsection shall not become final until all parties to the action have exhausted all appellate review.

GOVERNMENT ENFORCEMENT OPTION

(d) DEFINITIONS.

(1) ELIGIBLE EDUCATIONAL INSTITUTION.

(A) The term 'eligible educational institution' means an elementary or secondary school as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which

(i) is exempt from taxation under 501(a) as an organization described in section 501(c)(3), and

(ii) has not during the calendar year for which a tax credit is claimed or the two immediately preceding calendar years been declared, in an action brought by the United States pursuant to this section, to follow a 'racially discriminatory policy'.

(B) (i) For purposes of this Act, an institution follows a 'racially discriminatory policy' if: (a) it refuses to admit applicants as students on account of race; (b) it excludes students, on account of race, from the rights, privileges, programs, and activities generally made available to students by that institution; or (c) it discriminates against students, on account of race, in administering its scholarship, loan, athletic or other programs.

(ii) A 'racially discriminatory policy' does not include: (a) using a bona fide plan to increase enrollment of a disadvantaged minority group, provided that no institution shall

be required to use such a plan to be eligible under this section; (b) granting any privilege, preference or priority to members of, or adherents to, a particular religious organization or belief, or limiting admission to such members or adherents, provided that no such privilege, preference, priority or limitation is based upon race or upon a belief that requires discrimination on the basis of race; (c) failing to pursue or achieve any racial quota, proportion or representation in the student body.

(iii) The term 'race' shall include color or national origin.

(C) (i) To enforce this section, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in paragraph (B)(i) of this subsection, is authorized, upon finding good cause, to bring an action against an institution in the federal district court in the district in which such institution is located, seeking declaratory judgment that the institution is following a 'racially discriminatory policy' and has discriminated against the person filing the petition under such policy.

(ii) The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it. An

action may be filed by the Attorney General no later than two years after receiving the petition.

(iii) An institution is ineligible during the entire calendar year in which a judicial judgment that the institution follows a 'racially discriminatory policy' becomes final and during the two immediately succeeding calendar years.

(iv) A judicial judgment that an institution follows a 'racially discriminatory policy' as described in paragraph (B)(i) of this subsection shall not become final until all parties to the action have exhausted all appellate review.

PRIVATE ENFORCEMENT OPTION

(d) DEFINITIONS.

(1) ELIGIBLE EDUCATIONAL INSTITUTION.

(A) The term 'eligible educational institution' means an elementary or secondary school as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which

20
usc
2854

(i) is exempt from taxation under 501(a) as an organization described in section 501(c)(3), and

(ii) has not during the calendar year for which a tax credit is claimed or the two immediately preceding calendar years been declared, in an action brought pursuant to subsection (C) of this section, to follow a 'racially discriminatory policy'.

(B) (i) For purposes of this Act, an institution follows a 'racially discriminatory policy' if: (a) it refuses to admit applicants as students on account of race; (b) it excludes students, on account of race, from the rights, privileges, programs, and activities generally made available to students by that institution; or (c) it discriminates against students, on account of race, in administering its scholarship, loan, athletic or other programs.

(ii) A 'racially discriminatory policy' does not include: (a) using a bona fide plan to increase enrollment of a disadvantaged minority group, provided that no institution shall

be required to use such a plan to be eligible under this section; (b) granting any privilege, preference or priority to members of, or adherents to, a particular religious organization or belief, or limiting admission to such members or adherents, provided that no such privilege, preference, priority or limitation is based upon race or upon a belief that requires discrimination on the basis of race; (c) failing to pursue or achieve any racial quota, proportion or representation in the student body.

(iii) The term 'race' shall include color or national origin.

(C) A person who has been discriminated against by an institution under a policy described in paragraph (B)(i) of this section, may file suit against such institution in the federal district court in the district in which such institution is located, seeking declaratory judgment that such institution is following a 'racially discriminatory policy' and, under such policy, has discriminated against said person. Such suit must be filed within one year of the act of racial discrimination alleged therein to have been committed against the person filing the suit.

Explanation of Administration Bill

The Administration's bill would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year. Qualifying tuition expenses are expenses paid for tuition and fees to send certain dependents under the age of 20 full-time to private elementary or secondary schools. Qualifying tuition expenses do not include amounts paid for books, supplies, equipment, meals, lodging, transportation, or personal expenses, or for education below the first-grade level or above the twelfth-grade level.

The credit is allowed only for expenses paid with respect to students for whom the taxpayer is allowed a dependency exemption and who bear any of the following relationships to the taxpayer: children and descendants; stepchildren; siblings, stepbrothers, and stepsisters; nieces and nephews; and members of the taxpayer's household, other than the taxpayer's spouse, whose principal place of abode is the taxpayer's home. To be allowed a dependency exemption, the taxpayer must provide more than half of the student's support for the calendar year in which the taxpayer's year begins, and except for the taxpayer's children and stepchildren, the student must have less gross income than the amount of the exemption.

The amount of the credit that is allowable for the taxable year with respect to a student is subject to two limits. First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is \$100 for the taxpayer's first taxable year beginning on or after January 1, 1983, \$300 for the first taxable year beginning on or after January 1, 1984, and \$500 for taxable years beginning on or after January 1, 1985.

Second, the maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over \$50,000 and is phased out entirely for taxpayers with adjusted gross incomes of \$75,000 and over. For the first taxable year beginning on or after January 1, 1983, the \$100 per student maximum credit is reduced by .4 percent of the taxpayer's adjusted gross income over \$50,000; for the first taxable year beginning after January 1, 1984, the \$300 per student maximum credit is reduced by 1.2 percent of the taxpayer's adjusted gross income over \$50,000; and for taxable years beginning on or after January 1, 1985, the \$500 per student maximum credit is reduced by 2.0 percent of the taxpayer's adjusted gross income over \$50,000.

The amount of tuition expense for which a taxpayer is allowed a credit does not include expenses that are paid by scholarships and other educational aid that are not includible in the taxpayer's or in the student's income. If the scholarship is paid directly to the school and the school sends a tuition bill

to the taxpayer that is net of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense altogether.

A school with respect to which credits are allowable must provide a full-time elementary or secondary school program and must be a private, not-for-profit, day or residential school.

In addition, the school must be exempt from taxation under section 501(a) as an organization described in section 501(c)(3). Church-operated schools shall, pursuant to section 508(c), continue to be exempt from the provisions of section 508(a) and (b). The fact that credits are claimed for payments to a church-operated school shall not serve as a basis for imposing any new requirements on such schools in this regard.

The bill contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies.

First, a tax credit cannot be claimed unless the school is a tax exempt organization under section 501(c)(3). Under current law, a school cannot retain 501(c)(3) status if it discriminates on the basis of race. The IRS enforces this requirement through investigations and administrative proceedings. Although such IRS authority is presently the subject of litigation, the Administration is committed, in the event that authority is struck down, to supplying a statutory basis for enforcing non-discrimination requirements in connection with tax exemption.

The bill also creates a new layer of protections above and beyond the 501(c)(3) requirement. In order for tuition expenses to be eligible for the credit, the school must annually file with the Secretary a statement under the penalties of perjury that it has not followed a racially discriminatory policy. In addition, the Attorney General of the United States, upon petition by an individual who claims to have been discriminated against by a school under a racially discriminatory policy, may seek a declaratory judgment in a United States district court in which the school is located that the school follows a racially discriminatory policy. If a final judgment is entered that the school follows a racially discriminatory policy, tuition tax credits are disallowed for the year in which the complaint is filed by the Attorney General and the two succeeding calendar years. The disallowance does not take effect until all parties have exhausted their rights to appeal the declaratory judgment.

The proposal defines a racially discriminatory policy as a policy under which a school refuses, on account of race: to admit applicants as students; to admit students to the rights, privileges, programs and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic or other programs. A racially discriminatory policy does not include the failure by a school to

pursue or achieve any racial quota, proportion, or representation among its students.

The proposal is effective for tuition expenses paid after December 31, 1982, in taxable years beginning after that date.

Explanation of Administration Bill

The Administration's bill would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year. Qualifying tuition expenses are expenses paid for tuition and fees to send certain dependents under the age of 20 full-time to private elementary or secondary schools. Qualifying tuition expenses do not include amounts paid for books, supplies, equipment, meals, lodging, transportation, or personal expenses, or for education below the first-grade level or above the twelfth-grade level.

The credit is allowed only for expenses paid with respect to students for whom the taxpayer is allowed a dependency exemption and who bear any of the following relationships to the taxpayer: children and descendants; stepchildren; siblings, stepbrothers, and stepsisters; nieces and nephews; and members of the taxpayer's household, other than the taxpayer's spouse, whose principal place of abode is the taxpayer's home. To be allowed a dependency exemption, the taxpayer must provide more than half of the student's support for the calendar year in which the taxpayer's year begins, and except for the taxpayer's children and stepchildren, the student must have less gross income than the amount of the exemption.

The amount of the credit that is allowable for the taxable year with respect to a student is subject to two limits. First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is \$100 for the taxpayer's first taxable year beginning on or after January 1, 1983, \$300 for the first taxable year beginning on or after January 1, 1984, and \$500 for taxable years beginning on or after January 1, 1985.

Second, the maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over \$50,000 and is phased out entirely for taxpayers with adjusted gross incomes of \$75,000 and over. For the first taxable year beginning on or after January 1, 1983, the \$100 per student maximum credit is reduced by .4 percent of the taxpayer's adjusted gross income over \$50,000; for the first taxable year beginning after January 1, 1984, the \$300 per student maximum credit is reduced by 1.2 percent of the taxpayer's adjusted gross income over \$50,000; and for taxable years beginning on or after January 1, 1985, the \$500 per student maximum credit is reduced by 2.0 percent of the taxpayer's adjusted gross income over \$50,000.

The amount of tuition expense for which a taxpayer is allowed a credit does not include expenses that are paid by scholarships and other educational aid that are not includible in the taxpayer's or in the student's income. If the scholarship is paid directly to the school and the school sends a tuition bill

to the taxpayer that is net of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense altogether.

A school with respect to which credits are allowable must provide a full-time elementary or secondary school program and must be a private, not-for-profit, day or residential school.

In addition, the school must be exempt from taxation under section 501(a) as an organization described in section 501(c)(3). Church-operated schools shall, pursuant to section 508(c), continue to be exempt from the provisions of section 508(a) and (b). The fact that credits are claimed for payments to a church-operated school shall not serve as a basis for imposing any new requirements on such schools in this regard.

The bill contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies.

A tax credit cannot be claimed unless the school is a tax exempt organization under section 501(c)(3). The bill also creates a new layer of protections above and beyond the 501(c)(3) requirement. In order for tuition expenses to be eligible for the credit, the school must annually file with the Secretary a statement under the penalties of perjury that it has not followed a racially discriminatory policy. In addition, the Attorney General of the United States, upon petition by an individual who claims to have been discriminated against by a school under a racially discriminatory policy, may seek a declaratory judgment in a United States district court in which the school is located that the school follows a racially discriminatory policy. If a final judgment is entered that the school follows a racially discriminatory policy, tuition tax credits are disallowed for the year in which the complaint is filed by the Attorney General and the two succeeding calendar years. The disallowance does not take effect until all parties have exhausted their rights to appeal the declaratory judgment.

The proposal defines a racially discriminatory policy as a policy under which a school refuses, on account of race: to admit applicants as students; to admit students to the rights, privileges, programs and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic or other programs. A racially discriminatory policy does not include the failure by a school to pursue or achieve any racial quota, proportion, or representation among its students.

The proposal is effective for tuition expenses paid after December 31, 1982, in taxable years beginning after that date.

Proposed Changes to the Anti-Discrimination Provisions of the
Tuition Tax Credit Bill

1. New Eligibility Requirement (p. 4)

The new bill would contain a provision requiring schools to publish a statement of nondiscriminatory policy in their bylaws, brochures, admissions materials, and other publications.

2. Annual Statement Under Oath is Retained (p. 2)

The new bill would retain the original requirement that each school file with the Secretary of the Treasury and send to parents an annual statement under oath that the school has not discriminated on the basis of race during the calendar year.

3. Changes in the Triggering of the Declaratory Judgment Procedure and Investigation by the Attorney General (pp. 5-6)

The original bill provided that to trigger an investigation by the Attorney General, a person who had been discriminated against by a school had to file a complaint.

The new provision would allow a petition to be filed by any person, provided that person alleges with particularity:

- (a) an act of discrimination, or
- (b) a communication expressing a discriminatory policy.

Under the original bill, the Attorney General was authorized to file a declaratory judgment action whenever he finds good cause, upon investigation, to believe that a school follows a racially discriminatory policy.

Under the new bill, the Attorney General would be authorized and directed to file suit under such circumstances.

Once the Attorney General files suit, he must show that the school is following a racially discriminatory policy, but under the new bill he is not bound or limited by the allegations contained in the petition that triggered the suit. The Attorney General must show actual evidence of racial discrimination, not failure to meet a quota or numerical standard.

The old bill contained a provision allowing the Attorney General to enter into a settlement agreement with schools against which complaints have been received. This provision would be retained.

If Senators so desire, the Administration would have no objection to a provision requiring regular reports by the Attorney General to Congress concerning the disposition of petitions and actions filed pursuant thereto.

4. Reinstatement of Credits (pp. 1-2, 6-7)

Under the original bill, a school adjudged to be discriminatory became automatically re-eligible for credits after a three-year penalty period.

The new bill would impose an indefinite penalty period, which continues until the school shows in court that it no longer discriminates.

The new bill would provide that the school may not move to reinstate its eligibility for credits until it has maintained a clean record for at least one year following the judgment against it.

The school must make a showing that it has ceased its discriminatory policy, communicated its change in policy to the community, and complied with various publication requirements.

5. Stay of Penalties Pending Exhaustion of Appeals (pp. 1-2)

The original bill stayed all penalties until all appeals have been exhausted. Under the new bill, penalties could go into effect immediately upon entry of judgment by the district court against a school.

6. Commencement of Penalty Period (pp. 1-2, 8-9)

The original bill provided that penalties would not be imposed until final appeal, but that when imposed they would be retroactive to the year in which the complaint was filed.

Under the new provisions, the penalties would go into effect at the time the district court judgment is entered, but the penalties are retroactive only to the beginning of the calendar year in which the judgment was entered. Tax returns filed for previous years will generally not, therefore, have to be reopened.

7. Enforcement Responsibility (p. 3)

The new bill would direct the Secretary of the Treasury to provide the Attorney General all information relevant to the Attorney General's investigations and actions under the bill.

BRIEFING PAPER

TUITION TAX CREDIT MEETING

Mark-up is scheduled in Senate Finance Committee for tomorrow morning (9:30 or 10:00 a.m.).

It is still not clear whether Senator Bradley will continue to pursue his amendments to our anti-discrimination provisions. Bradley's amendments (Tab A) would create a right of private enforcement and unfettered IRS enforcement with no safeguards against abuses of the past.

Over the Labor Day recess, we developed a "compromise" in close consultation with the staffs of Senators Dole, Packwood, and Moynihan. The compromise sticks firmly to our basic DOJ enforcement approach and has been approved by the coalition of credit supporters. An outline of the compromise is attached as Tab B.

Last week we offered the compromise to Senators Packwood, Moynihan, and Bradley. Yesterday we started an intensive two-pronged legislative effort: (1) we visited the staff of every Finance Committee Senator who might conceivably support us; and (2) Brad Reynolds or Buck Chapoton are personally visiting each of the Senators.

This is the picture so far:

- o The compromise has been well received by everyone as a "reasonable, honest, good faith effort" by the Administration (even Senator Bradley's staff indicated this).
- o Senator Bradley has not indicated whether he intends to proceed with his amendments.
- o If it comes down to a vote between our compromise and Senator Bradley's amendments, we think we have 5 or 6 relatively firm votes: Dole, Armstrong, Symms, Grassley, Long, H. Byrd.
- o Another 5 are inclined to support us, but would be highly reluctant to do so unless Senators Packwood and Moynihan are on board: Roth, Danforth, Wallop, Durenburger, Boren.
- o Packwood has not yet indicated what he will do.
- o Moynihan has told the U.S. Catholic Conference that our compromise is "real fine" and that he will support it. We do not have an unequivocal commitment that he will resist Bradley's amendments.

We need 10 votes to win. If Packwood and Moynihan support us, Bradley will probably cave. If he does not, and Packwood and Moynihan vote with us, we would likely beat Bradley handily, with 14-15 votes.

If Packwood and Moynihan stay on the fence or side with Bradley, it will be quite difficult, though not impossible, to muster 10 votes. Even if we were to beat Bradley under these circumstances, however, the whole matter would be escalated to a highly visible and intense controversy, and we would face a tough floor fight.

Attached (Tab C) is a list of Senators on the Senate Finance Committee and an assessment on where they stand.

Substantive Issues

No one has made any specific criticism of our compromise. The disagreement appears more fundamental.

Senator Bradley does not trust DOJ enforcement and wants to add two back-up mechanisms: (1) private enforcement actions, and (2) IRS administrative enforcement.

The arguments against Bradley's position are set forth in the Fact Sheet attached as Tab D.

Privately, Packwood and Moynihan would probably agree with our criticisms of Bradley's amendments, but may nevertheless back Bradley for political reasons.

Proposed Changes to the Anti-Discrimination Provisions of the
Tuition Tax Credit Bill

1. New Eligibility Requirement (p. 4)

The new bill would contain a provision requiring schools to publish a statement of nondiscriminatory policy in their bylaws, brochures, admissions materials, and other publications.

2. Annual Statement Under Oath is Retained (p. 2)

The new bill would retain the original requirement that each school file with the Secretary of the Treasury and send to parents an annual statement under oath that the school has not discriminated on the basis of race during the calendar year.

3. Changes in the Triggering of the Declaratory Judgment Procedure and Investigation by the Attorney General (pp. 5-6)

The original bill provided that to trigger an investigation by the Attorney General, a person who had been discriminated against by a school had to file a complaint.

The new provision would allow a petition to be filed by any person, provided that person alleges with particularity:

- (a) an act of discrimination, or
- (b) a communication expressing a discriminatory policy.

Under the original bill, the Attorney General was authorized to file a declaratory judgment action whenever he finds good cause, upon investigation, to believe that a school follows a racially discriminatory policy.

Under the new bill, the Attorney General would be authorized and directed to file suit under such circumstances.

Once the Attorney General files suit, he must show that the school is following a racially discriminatory policy, but under the new bill he is not bound or limited by the allegations contained in the petition that triggered the suit. The Attorney General must show actual evidence of racial discrimination, not failure to meet a quota or numerical standard.

The old bill contained a provision allowing the Attorney General to enter into a settlement agreement with schools against which complaints have been received. This provision would be retained.

If Senators so desire, the Administration would have no objection to a provision requiring regular reports by the Attorney General to Congress concerning the disposition of petitions and actions filed pursuant thereto.

4. Reinstatement of Credits (pp. 1-2, 6-7)

Under the original bill, a school adjudged to be discriminatory became automatically re-eligible for credits after a three-year penalty period.

The new bill would impose an indefinite penalty period, which continues until the school shows in court that it no longer discriminates.

The new bill would provide that the school may not move to reinstate its eligibility for credits until it has maintained a clean record for at least one year following the judgment against it.

The school must make a showing that it has ceased its discriminatory policy, communicated its change in policy to the community, and complied with various publication requirements.

5. Stay of Penalties Pending Exhaustion of Appeals (pp. 1-2)

The original bill stayed all penalties until all appeals have been exhausted. Under the new bill, penalties could go into effect immediately upon entry of judgment by the district court against a school.

6. Commencement of Penalty Period (pp. 1-2, 8-9)

The original bill provided that penalties would not be imposed until final appeal, but that when imposed they would be retroactive to the year in which the complaint was filed.

Under the new provisions, the penalties would go into effect at the time the district court judgment is entered, but the penalties are retroactive only to the beginning of the calendar year in which the judgment was entered. Tax returns filed for previous years will generally not, therefore, have to be reopened.

7. Enforcement Responsibility (p. 3)

The new bill would direct the Secretary of the Treasury to provide the Attorney General all information relevant to the Attorney General's investigations and actions under the bill.

8. Attorneys Fees (p. 8)

The new bill would add a provision for the award of attorneys fees for schools that are found not guilty of racial discrimination following an action under this section.

Senate Finance Committee

Line-Up on Tuition Tax Credits and Bradley Amendments

Dole	Will fully support us.
Packwood	Has not yet taken a position.
Roth	Strongly inclined to support us, but would feel exposed unless Packwood on board.
Danforth	Inclined to support us, but reluctant to do so unless Packwood on board.
Chafee	Strongly opposes tuition tax credits and would likely support Bradley.
Heinz	Wants to avoid the whole issue. Will not be at mark-up and will probably not leave proxy.
Wallop	Opposes tuition tax credits, but would be inclined to help us against Bradley to avoid embarrassment of Administration.
Durenberger	Inclined to support us, but reluctant to do so unless Packwood on board.
Armstrong	Will support us.
Symms	Likely to support us.
Grassley	Likely to support us, but would like Packwood on board.
Long	Likely to support us.
H. Byrd	Opposes tuition tax credits, but we think he will help us defeat Bradley.
Bentsen	Opposes tuition tax credits and will probably back Bradley.
Matsunaga	Will likely do whatever Packwood and Moynihan do.
Moynihan	A question mark.
Baucus	Will oppose us.
Boren	Opposes tuition tax credits, but we think he may help us against Bradley.
Bradley	
Mitchell	Will probably oppose us.

FACT SHEET: SENATOR BRADLEY'S AMENDMENTS TO THE
TUITION TAX CREDIT BILL

The Administration has proposed substantial revisions to the anti-discrimination section of its tuition tax credit bill. These revisions meet most of Senator Bradley's concerns.

Two of Senator Bradley's proposed changes have not been adopted by the Administration. These are:

- o the authorization of private enforcement actions that may be brought in federal court by any citizen against any private school; and
- o a mandate for IRS enforcement with no standards or limits on the intrusiveness or burden of such regulation.

The Administration believes both proposals are unwise and, if adopted, would make the bill politically unpassable. On this point, all groups in favor of tuition tax credits agree with the Administration.

Private Enforcement Action

Senator Bradley has proposed an amendment that would:

". . . authorize a private right of action to seek a declaratory judgment that a school has followed a racially discriminatory policy by persons alleging they are harmed by the school's participation in the tuition tax credit program."

- o This amendment would depart from the general rule that public law is enforced by government authorities, not private citizens, especially when the law involves the denial of benefits or the exaction of penalties. (This is to be distinguished from private rights of action that are meant to compensate the victim of wrongful discrimination.)
- o The dangers of departing from this general rule are especially great when the potential defendants are small schools with very limited financial resources, which could easily be destroyed by the costs of defending against frivolous, harassing law suits. Litigation costs will ultimately be borne by the parents. The costs of defending against a groundless lawsuit, even for a short time, would often completely offset the value of the credits.

- o The amendment would expose a school to potential liability every time it makes any decision regarding a minority student: including decisions concerning admissions, discipline, placement on athletic teams, or even the grading of exams and papers.
- o The amendment is so broadly worded that suits could even be brought by public school authorities or teachers unions that allege harm from a private school's participation in the tuition tax credit program.

Unrestricted IRS Enforcement

Senator Bradley's amendments would give the IRS carte blanche. They would establish this IRS enforcement role in addition to other enforcement mechanisms, would direct the IRS to establish procedures for auditing schools that are eligible for tuition tax credits, and would require that audit procedures be done "in a manner that maximizes compliance with the legislation's anti-discrimination provisions."

Senator Bradley's amendments thus contemplate four tiers of policing mechanisms:

- (1) private enforcement actions;
- (2) Attorney General enforcement;
- (3) enforcement of the tax-exempt requirement under 501(c)(3) (as ultimately determined by the Supreme Court or by Congress); and
- (4) IRS enforcement of the anti-discrimination provisions of the tuition tax credit bill.

No institution, especially a small private school, can function effectively under four tiers of federal regulation.

Senator Bradley's amendments suffer from other flaws as well:

- o These amendments contain no limits whatever on the ability of the IRS to impose unwarranted burdens on schools, to apply unfair quota-based standards to define discrimination, or to presume schools guilty and make them prove their innocence -- all issues which have stirred great controversy in the past.
- o IRS enforcement would by nature place the burden on each school to prove its innocence, since the IRS generally makes taxpayers prove eligibility for benefits.

- o The mandate for aggressive audit procedures, with no stated limits, openly invites the IRS to implement procedures similar to its 1978-79 proposed revenue procedures concerning private schools, which created a bitter controversy and a record number of letters and comments.
- o Because of past controversies over IRS enforcement, any attempt to define the enforcement role for IRS before the Supreme Court decides the Bob Jones case, will simply arouse passions on both sides of this controversy and make the tuition tax credit bill unpassable.

Conclusion

The Administration's compromise strikes a fair balance by, on the one hand, guaranteeing that credits will not be used to promote discrimination and, on the other hand, ensuring that the integrity of racially fair-minded private schools is not jeopardized.

Senator Bradley's amendments would shift this salutary balance by conferring on the IRS unfettered enforcement power, while showing no sensitivity to the legitimate needs of racially fair-minded schools.

Further, Senator Bradley's amendments would set a bad precedent. If the Supreme Court holds that a new statute is required to authorize denial of tax-exempt status to racially discriminatory schools, the Administration has made it clear that it will seek such a statute. No one would want Senator Bradley's approach -- with its private enforcement actions and unfettered IRS role -- to serve as a model. Senator Bradley's ideas, if carried over into the area of 501(c)(3) status generally, would expose a broad range of private institutions, going beyond private schools, to unwarranted burdens and to excessive risks of intrusions and harassment.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 16, 1982

FOR: EDWIN MEESE, III
FROM: WILLIAM P. BARR
SUBJECT: Proposed Compromise to Tuition Tax Credit

I believe we should not agree to the compromise unless we extract from Senators Packwood, Moynihan, and Bradley promises to oppose any further amendments to the anti-discrimination provisions of the bill on the floor. This should be done at the mark-up this morning.

Bob Baldwin and other representatives of the fundamentalist schools have made it clear to me that they would not support the compromise unless such assurances are received.

Moreover, if those Senators fail to give such assurances, we can once again pin the blame for killing the bill on them.

TALKING POINTS

- o Administration approach developed through 2 1/2 months of consultations with all interested parties, including private school community, government agencies and Congress, and civil rights organizations.
- o We have quite an accomplishment.
 - At this stage, everyone agrees that Administration bill has a strong, effective anti-discrimination provision and is fair and reasonable.
 - At the same time, all the groups supporting tuition tax credits are behind our approach, including such diverse groups as the U.S.C.C. and A Gudah Israel.
 - In short, after much consultation and negotiation, we have achieved a good but delicate balance.
- o Senator Bradley's amendment will destroy that balance.
- o Bradley's amendment was hatched hurriedly within his own office overnight. He had no consultations with the major pro-credit groups in developing his approach.
- o IRS enforcement mechanism must be carefully developed and thoroughly considered. This can only be done when the dust settles on 501(c)(3).
- o We should not adopt an IRS enforcement provision that was slapped together overnight.
 - If we later have to set up a 501(c)(3) enforcement mechanism, whatever IRS provision we adopt now would serve as model. This would affect broad range of institutions.
 - This is why Administration would like to go with a strong DOJ provision now, and address IRS' enforcement role when it can be done comprehensively and thoughtfully.