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DISCUSSION DRAFT

September 21, 1982

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Educational Opportunity
3 and Equity Act of 1982".

4 SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

5 (a) Findings.--The Congress finds that it is the policy
6 of the United States to foster educational opportunity,
7 diversity, and choice for all Americans. Therefore, this Act
8 recognizes that--

9 (1) pluralism is one of the great strengths of
10 American society, diversity in education is an important
11 contributor to that pluralism, and nonpublic schools play
12 an indispensable role in making that diversity possible;

13 (2) the existence and availability of alternatives to
14 public education tend to strengthen public education
15 through competition and to improve the educational
16 opportunities of all Americans;

17 (3) Americans should have equal opportunities to
18 choose between the education offered by public schools
19 and available in private educational systems and should
20 not be compelled because of economic circumstances to
21 accept education provided by government-created and
22 government-operated school systems, and to force such a
23 selection is an unfair and unjust discrimination against
24 persons of lesser means;

25 (4) increasing numbers of American families are
26 unable to afford nonpublic school tuition in addition to
27 the State and local taxes that go to support public
28 schools, and tax relief for nonpublic school tuition
29 expenses is necessary if American families are to
30 continue to have a meaningful choice between public and
31 private education at the elementary and secondary levels;

32 (5) tax relief in the form of tuition tax credits is

1 the fairest way to extend a choice in education to a wide
2 range of individuals, tax relief in the form of tuition
3 tax credits creates the least possible danger of
4 interference in the lives of individuals and families
5 consistent with achieving these ends, and tax relief in
6 the form of tuition tax credits achieves these ends with
7 a minimum of complexity so that those for whom the tax
8 relief is intended will be able to understand and take
9 advantage of it;

10 (6) the tax revenue loss occasioned by a tuition tax
11 credit for a child would be small compared to the cost to
12 State and local taxpayers of educating the child at a
13 public school; and

14 (7) equality of educational opportunity is the policy
15 of the United States, and the tax relief afforded by this
16 legislation should not be used to promote racial
17 discrimination.

18 (b) Purpose.--The primary purpose of this Act is to
19 enhance equality of educational opportunity, diversity, and
20 choice for Americans. The Congress finds that this Act will
21 expand opportunities for personal liberty, diversity, and
22 pluralism that constitute important strengths of education in
23 America.

24 SEC. 3. CREDIT FOR TUITION EXPENSES.

25 (a) In General.--Subpart A of part IV of subchapter A of
26 chapter 1 of the Internal Revenue Code of 1954 (relating to
27 credits allowable) is amended by inserting after section 44G
28 the following new section:

29 ``SEC. 44H. CREDIT FOR TUITION EXPENSES.

30 ``(a) General Rule.--At the election of an individual,
31 there shall be allowed as a credit against the tax imposed by
32 this chapter for the taxable year an amount equal to 50
33 percent of the qualified tuition expenses paid by such
34 individual during the taxable year for any qualified

1 dependent.

2 `` (b) Limitations.--

3 `` (1) Maximum dollar amount per qualified
4 dependent.--

5 `` (A) In general.--The amount of the credit
6 allowable to the taxpayer under subsection (a) with
7 respect to any qualified dependent for any taxable
8 year shall not exceed the applicable amount.

9 `` (B) Applicable amount.--For purposes of this
10 paragraph, the term 'applicable amount' means the
11 excess, if any, of--

12 `` (1) \$300, over

13 `` (ii) 3 percent (6 percent in the case of a
14 married individual who does not file a joint
15 return) of the amount, if any, by which the
16 adjusted gross income of the taxpayer for the
17 taxable year exceeds \$40,000 (\$20,000 in the case
18 of such married individual).

19 `` (C) Transitional rule.--For taxable years
20 beginning after December 31, 1982, and before January
21 1, 1985, subparagraph (B) shall be applied--

22 `` (1) in taxable years beginning in 1983, by
23 substituting--

24 `` (I) '\$100' for '\$300',

25 `` (II) '1 percent' for '3 percent', and

26 `` (III) '2 percent' for '6 percent', and

27 `` (ii) in taxable years beginning in 1984, by
28 substituting--

29 `` (I) '\$200' for '\$300',

30 `` (II) '2 percent' for '3 percent', and

31 `` (III) '4 percent' for '6 percent'.

32 `` (2) Credit not to exceed tax liability.--The credit
33 allowed by subsection (a) shall not exceed the tax
34 imposed by this chapter for the taxable year, reduced by

1 the sum of the credits allowable under a section of this
2 subpart having a lower number or letter designation than
3 this section, other than credits allowable by sections
4 31, 39, and 43.

5 "(c) Disallowance of Credited Expenses as Deduction.--No
6 deduction or credit shall be allowed under any other
7 provision of law for any tuition expense to the extent that
8 such expense is taken into account in determining the amount
9 of the credit allowed under subsection (a).

10 "(d) Credit Denied for Amounts Paid to Racially
11 Discriminatory Institutions.--

12 "(1) Declaratory judgment entered.--

13 "(A) In general.--No credit shall be allowed
14 under this section for any amount paid to an
15 educational institution during any taxable year if
16 within the calendar year ending with or within such
17 taxable year or in any preceding calendar year--

18 "(i) either--

19 "(I) a judgment has been entered by a
20 district court of the United States under
21 section 7408 (regardless of whether such
22 judgment is appealed) declaring that such
23 educational institution follows a racially
24 discriminatory policy, or

25 "(II) an order by any United States
26 Court of Appeals has been made ^{which by its terms, requires} ~~requiring~~ a
27 district court to enter such a judgment, and

28 "(ii) no order described in section 7408 (f)
29 (2) with respect to such educational institution
30 has been entered at any time subsequent to such
31 judgment (~~regardless of whether such order has~~
32 ~~been appealed~~).

33 "(B) Reversals of declaratory judgments.--

34 "(i) In general.--A judgment or order

1 described in subparagraph (A) (i) entered in an
2 action brought with respect to an educational
3 institution (hereinafter in this clause referred
4 to as the 'original judgment or order') shall not
5 be taken into account under subparagraph (A) in
6 any taxable year if another order (other than an
7 order described in section 7408 (f) (2)) or
8 judgment is subsequently entered in such action
9 which--

10 (I) reverses or vacates the original
11 judgment or order or modifies the original
12 judgment or order to negate any declaration
13 that such educational institution has
14 followed a racially discriminatory policy,
15 and

16 (II) is final and no longer appealable.

17 (ii) Waiver of limitations.--

18 Notwithstanding section 6511 (a) or any other
19 period of limitation or lapse of time, a claim
20 for credit or refund of overpayment of the tax
21 imposed by this chapter which arises by reason of
22 this subparagraph may be filed by any person at
23 any time within the 1-year period beginning on
24 the date on which any judgment or order described
25 in clause (i) (I) becomes final and no longer
26 appealable. Sections 6511 (b) and 6514 shall not
27 apply to any claim for credit or refund filed
28 under this paragraph within such 1-year period.

29 (C) Stay of declaratory judgment.--

30 (i) In general.--Any judgment or order
31 described in subparagraph (A) (i) shall not be
32 taken into account under subparagraph (A) for any
33 taxable year if such judgment or order is stayed
34 as of the close of such taxable year.

1 “(ii) Removal of stay.--If a stay entered
2 against a judgment or order described in
3 subparagraph (A) (1) is vacated and such judgment
4 or order becomes final and no longer appealable--

5 “(I) this subparagraph shall not apply
6 with respect to such judgment or order for
7 any taxable year preceding the taxable year
8 in which such stay is vacated, and

9 “(II) notwithstanding any other
10 provision of this title or of any other law,
11 the statutory period for the assessment of a
12 deficiency attributable to the disallowance
13 of any credit under this section by reason of
14 this clause shall not expire before the date
15 which is 3 years after the date on which such
16 stay is removed.

17 “(2) Required statements.--

18 “(A) Statements furnished by institutions to the
19 Secretary.--No credit shall be allowed under
20 subsection (a) for amounts paid to an educational
21 institution during a calendar year if, at the end of
22 such calendar year, the educational institution has
23 not filed with the Secretary (in such manner and form
24 as the Secretary shall by regulation prescribe) a
25 verified statement which--

26 “(1) declares that such institution has not
27 followed a racially discriminatory policy during
28 such calendar year;

29 “(ii) indicates whether--

30 “(I) a declaratory judgment has been
31 entered against such institution in an action
32 brought under section 7408; and

33 “(II) an order described in section 7408
34 (f) (2) has been entered in such action; and

w/20

preceding

is stay effective

1 “(iii) attests that such institution has
2 complied with the requirements of subsection (A)
3 (3) (D) during such calendar year.

4 “(B) Statements furnished to taxpayers.--On or
5 before January 31 of the calendar year succeeding the
6 calendar year to which the statement described in
7 subparagraph (A) relates, the institution shall
8 furnish a copy of such statement to all persons who
9 paid tuition expenses to the institution in the
10 calendar year to which such statement relates.

11 “(C) Statements furnished by taxpayers to the
12 Secretary.-- No credit shall be allowed to a taxpayer
13 under subsection (a) for amounts paid to an
14 educational institution during a calendar year if the
15 taxpayer does not attach to the return on which the
16 taxpayer claims the credit the statement described in
17 subparagraph (A) which is furnished by such
18 institution for the calendar year ending with or
19 within the taxable year of the taxpayer.

20 “(3) Enforcement responsibility.--The Attorney
21 General shall have exclusive authority under this
22 subsection to investigate and to determine whether an
23 educational institution is following a racially
24 discriminatory policy.

25 “(4) Racially discriminatory policy.--For purposes
26 of this subsection--

27 “(A) In general.--An educational institution
28 follows a racially discriminatory policy if such
29 institution refuses, on the basis of race, to--

30 “(i) admit applicants as students;

31 “(ii) admit students to the rights,
32 privileges, programs, and activities generally
33 made available to students by the educational
34 institution; or

1 “(iii) allow students to participate in its
2 scholarship, loan, athletic, or other programs.

3 “(B) Quotas, etc.--The term ‘racially
4 discriminatory policy’ shall not include failure of
5 such institution to pursue or achieve any racial
6 quota, proportion, or representation in the student
7 body.

8 “(C) Race.--The term ‘race’ shall include color
9 or national origin.

10 “(e) Definitions.--For purposes of this section--

11 “(1) Qualified tuition expenses.--The term
12 ‘qualified tuition expenses’ means the excess of--

13 “(A) the amount of tuition expenses paid by the
14 taxpayer during the taxable year to any eligible
15 educational institution for any qualified dependent
16 of such taxpayer, over

17 “(B) any scholarship or financial assistance
18 paid during such taxable year to such qualified
19 dependent or to the taxpayer with respect to such
20 qualified dependent.

21 “(2) Qualified dependent.--The term ‘qualified
22 dependent’ means any individual--

23 “(A) who is a dependent of the taxpayer (other
24 than an individual described in paragraph (4), (5),
25 (7), or (8) of section 152 (a)),

26 “(B) who has not attained 20 years of age at the
27 close of the taxable year, and

28 “(C) with respect to whom a deduction under
29 section 151 is allowable to the taxpayer for the
30 taxable year.

31 “(3) Eligible educational institution.--The term
32 ‘eligible educational institution’ means an educational
33 institution--

34 “(A) which provides a full-time program of

1 elementary or secondary education;

2 "(B) which is a privately operated, not-for-
3 profit, day or residential school;

4 "(C) which is exempt from taxation under section
5 501(a) as an organization described in section
6 501(c)(3), including church-operated schools to which
7 subsections (a) and (b) of section 508 do not apply;

8 "(D) which includes in its by-laws,
9 advertisements, admission application forms and other
10 such publications, if any, a statement (in such form
11 and manner as the Secretary may by regulations
12 prescribe) that it does not discriminate against
13 student applicants or students on the basis of race;

14 "(E) which does not have an admissions policy
15 that discriminates against handicapped children; and

16 "(F) attendance at which satisfies the
17 requirements of any law of the State in which--

18 "(1) such institution is located, or

19 "(ii) the qualified dependent of the
20 taxpayer resides,

21 which requires children to attend school.

22 "(4) Admissions policy which discriminates against
23 handicapped children.--

24 "(A) In general.--An educational institution has
25 an admissions policy which discriminates against
26 handicapped children if such institution refuses to
27 admit otherwise qualified applicants solely on the
28 basis of their handicap.

29 "(B) Inability to meet special needs.--An
30 educational institution which denies admission to any
31 handicapped child shall not be treated as having an
32 admissions policy which discriminates against
33 handicapped children if such admission is denied
34 because such institution does not ~~provide~~ the special

have

1 facilities or programs or specially qualified
2 personnel to adequately deal with such child's
3 handicap.

acomodate

4 "(C) Handicapped children.--The term
5 'handicapped children' has the same meaning given
6 such term by section 602 (1) of the Education of the
7 Handicapped Act.

8 "(5) Tuition expenses.--

9 "(A) In general.--The term 'tuition expenses'
10 means tuition and fees paid for the full-time
11 enrollment or attendance of a student at an
12 educational institution, including required fees for
13 courses.

14 "(B) Certain expenses excluded.--The term
15 'tuition expenses' does not include any amount paid
16 for--

17 "(i) books, supplies, and equipment for
18 courses of instruction at the educational
19 institution;

20 "(ii) meals, lodging, transportation, or
21 personal living expenses;

22 "(iii) education below the first-grade
23 level; or

24 "(iv) education above the twelfth-grade
25 level.

26 "(6) Scholarship or financial assistance.--The term
27 'scholarship or financial assistance' means--

28 "(A) a scholarship or fellowship grant (within
29 the meaning of section 117(a)(1)) which is not
30 includible in gross income under section 117;

31 "(B) an educational assistance allowance under
32 chapter 32, 34, or 35 of title 38, United States
33 Code; or

34 "(C) other financial assistance which--

1 “(i) is for educational expenses, or
2 attributable to attendance at an educational
3 institution, and

4 “(ii) is exempt from income taxation by any
5 law of the United States (other than a gift,
6 bequest, devise, or inheritance within the
7 meaning of section 102(a)).

8 “(f) Election.--The election provided under subsection
9 (a) shall be made at such time and in such manner as the
10 Secretary shall by regulations prescribe.”.

11 (b) Disclosure of Information to Attorney General.--
12 Subsection (h) of section 6103 of such Code (relating to
13 disclosure to certain Federal officers and employees for tax
14 administration purposes) is amended by adding at the end
15 thereof the following new paragraph:

16 “(6) Certain investigations and proceedings
17 regarding racially discriminatory policies.--Upon the
18 request of the Attorney General or the Secretary's own
19 motion, the Secretary shall disclose any return or return
20 information which is relevant to--

21 “(A) any investigation conducted by the Attorney
22 General under section 44H ^{ce} (d) with regard to whether
23 an educational institution is following a racially
24 discriminatory policy (within the meaning of section
25 44H ^c (d) (4)), or

26 “(B) any proceeding which may be brought under
27 section 7408,
28 to any officer or employee of the Department of Justice
29 who is directly and personally involved in such
30 investigation or in preparation for such a proceeding.”.

31 (c) Conforming Amendment.--

32 (1) The table of sections for subpart A of part IV of
33 subchapter A of chapter 1 of such Code is amended by
34 inserting after the item relating to section 44G the

1 following:

“Sec. 44H. Tuition expenses.”.

2 (2) Section 6504 of such Code (relating to cross
3 references with respect to periods of limitation) is
4 amended by adding a new paragraph (12) at the end
5 thereof:

“(12) Disallowance of tuition tax credits because
of a declaratory judgment that a school follows a
racially discriminatory policy, see section 44H(d).”.

6 SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

7 (a) In General.--Subchapter A of chapter 76 of the
8 Internal Revenue Code of 1954 (relating to judicial
9 proceedings) is amended by redesignating section 7408 as
10 section 7409 and by inserting after section 7407 the
11 following new section:

12 “SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY
13 DISCRIMINATORY POLICIES OF SCHOOLS.

14 “(a) In General.--Upon filing of an appropriate pleading
15 by the Attorney General under subsection (b), the district
16 court of the United States for the district in which an
17 educational institution is located may make a declaration
18 with respect to whether such institution follows a racially
19 discriminatory policy. Any such declaration shall have the
20 force and effect of a final judgment of the district court
21 and shall be reviewable as such.

22 “(b) Filing of ^{Pleading} ~~Petition~~.--

23 “(1) In general.--The Attorney General is authorized
24 and directed to seek a declaratory judgment under
25 subsection (a) against any educational institution upon--

26 “(A) receipt by the Attorney General within the
27 previous 1-year period of any allegation of
28 discrimination against such institution, and

29 “(B) a finding by the Attorney General of good
30 cause.

31 “(2) Allegation of discrimination.--For purposes of

1 this section, the term 'allegation of discrimination'
2 means an allegation made in writing by any person which
3 alleges with specificity that--

4 "(A) a named educational institution has,
5 ~~pursuant to a racially discriminatory policy,~~
6 discriminated against a named student applicant or
7 student within one year preceding the date on which
8 such allegation is made to the Attorney General, or

*committed
engaged in
act of
racial*

9 "(B) the educational institution made a
10 ~~statement,~~ *communication*
11 ~~communicating an intent to follow~~ a racially
12 discriminatory policy.

leave it

13 "(3) Notice of allegations of discrimination.--Upon
14 receipt of any allegation of discrimination made against
15 an educational institution, the Attorney General shall
16 promptly give written notice of such allegation to such
17 institution.

18 "(4) Opportunity to comment.--Before any action may
19 be filed against an educational institution by the
20 Attorney General under subsection (a), the Attorney
21 General shall give the institution a fair opportunity to
22 comment on all allegations made against it and to show
23 that the alleged racially discriminatory policy does not
24 exist or has been abandoned.

25 "(5) Notice to complainant.--If an allegation of
26 discrimination against an educational institution is made
27 to the Attorney General and the Attorney General declines
28 to bring an action under subsection (a) against such
29 institution, the Attorney General shall promptly give to
30 the person who made such allegation all information upon
31 which the Attorney General based the decision not to
32 bring such an action.

33 "(c) Requirements for a Finding of Following a Racially
34 Discriminatory Policy.--A district court may declare that an

1 educational institution follows a racially discriminatory
2 policy in an action brought under subsection (a) only if the
3 Attorney General establishes in such action that--

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

8 “(2) the institution has, within the two years
9 preceding commencement of such action, made a statement
10 communicating an intent to follow a racially
11 discriminatory policy against student applicants or
12 students; or

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

18 “(d) Settlements.--

19 “(1) In general.--Prior to, and in lieu of, filing
20 an action under subsection (a), the Attorney General may,
21 at his discretion, enter into a settlement agreement with
22 the educational institution against which an allegation
23 of discrimination has been made if the Attorney General
24 finds that the institution has been acting in good faith
25 and has abandoned its racially discriminatory policy.

26 “(2) Violation of settlement agreement.--If the
27 Attorney General has entered into a settlement agreement
28 with an educational institution under paragraph (1) and
29 the Attorney General finds that such institution is in
30 violation of such agreement, the Attorney General may--

31 “(A) notwithstanding subsection (b) (1) (A),
32 bring an action under subsection (a) without having
33 received any allegation of discrimination against
34 such institution, or

1 “(B) bring an action to enforce the terms of
2 such agreement.”.

3 “(e) Retention of Jurisdiction.--Any district court
4 which makes a declaration under subsection (a) that an
5 educational institution follows a racially discriminatory
6 policy shall retain jurisdiction of such case.

7 “(f) Discontinuance of Racially Discriminatory Policy.--

8 “(1) Motion.--

9 “(A) In general.--At any time after the date
10 which is 1 year after the date on which a judgment is
11 entered in an action brought under subsection (a)
12 declaring that an educational institution follows a
13 racially discriminatory policy, such institution may
14 file with the district court a motion to modify such
15 judgment to include a declaration that such
16 institution no longer follows a racially
17 discriminatory policy.

18 “(B) Affidavits.--Any motion filed under
19 subparagraph (A) shall contain affidavits--

20 “(i) describing with specificity the ways in
21 which the educational institution has changed its
22 previous racially discriminatory policy;

23 “(ii) describing with specificity the ways
24 in which such institution has taken reasonable
25 steps to communicate its policy of
26 nondiscrimination to students, to faculty, and to
27 school administrators, and to the public in the
28 area it serves;

29 “(iii) averring that such institution has
30 not discriminated against an applicant or student
31 pursuant to a racially discriminatory policy
32 during the preceding year; and

33 “(iv) averring that such institution has
34 complied with the requirements of section 44H (e)

1 (3) (D).

2 "(2) Order.--If a motion is made under paragraph
3 (1), the district court shall issue an order modifying
4 the judgment entered in the action to include a
5 declaration that the educational institution no longer
6 follows a discriminatory policy unless the Attorney
7 General establishes that--

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

10 "(B) the institution has discriminated against
11 an applicant or student pursuant to a racially
12 discriminatory policy within the preceding year;

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

16 "(D) the institution has not, in fact, complied
17 with the publication requirements of clauses (ii) and
18 (iv) of paragraph (1) (B).

19 "(3) Appeal of orders.--Any order of the district
20 court granting or denying a motion made under paragraph
21 (1) shall be reviewable.

22 "(g) Attorneys Fees.--If an educational institution
23 prevails in an action under this section, the court may award
24 the institution costs and reasonable attorney's fees in such
25 action.

26 "(h) Racially Discriminatory Policy.--For purposes of
27 this section, the term 'racially discriminatory policy' has
28 the meaning given to such term by section 44H (d) (4)."

29 "(i) Report.--Within 90 days of the close of each
30 calendar year, the Attorney General shall submit a report to
31 the Congress concerning the disposition during such calendar
32 year of--

33 "(1) any allegations of discriminations received by
34 the Attorney General, and

1 “(2) any actions brought under this section.”.

2 (b) Conforming Amendment.--The table of sections for
3 subchapter A of chapter 76 of such Code (relating to civil
4 actions by the United States) is amended by striking out the
5 item relating to section 7408 and inserting in lieu thereof:

 “Sec. 7408. Declaratory judgment relating to
 racially discriminatory policies of
 schools.

 “Sec. 7409. Cross references.”.

6 SEC. 5. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

7 Tax credits claimed under section 44H of the Internal
8 Revenue Code of 1954 shall not constitute Federal financial
9 assistance to educational institutions or to the recipients
10 of such credits.

11 SEC. 6. EFFECTIVE DATE; SPECIAL RULE.

12 (a) Certification Required.--The amendments made by this
13 Act shall not take effect until the Attorney General
14 certifies to the Secretary of the Treasury that, pursuant
15 to--

16 (1) an Act or joint resolution which has been
17 enacted, or

18 (2) a final decision of the United States Supreme
19 Court,

20 the Internal Revenue Code of 1954 prohibits the granting of
21 tax exemption under section 501 (c) (3) to private
22 educational institutions maintaining a racially
23 discriminatory policy or practice as to students.

24 (b) Application When Certification is Made.--If the
25 certification described in subsection (a) is made to the
26 Secretary of the Treasury--

27 (1) the amendments made by section 3 shall apply with
28 respect to expenditures made after July 31, 1983, in
29 taxable years beginning after December 31, 1982, and

30 (2) the amendments made by section 4 shall take
31 effect on the date on which such certification is made to
32 the Secretary of the Treasury.

1 (c) Estimated Income Tax and Wage Withholding.--

2 (1) Estimated income tax.--Any credit allowable to
3 any taxpayer under section 44H of the Internal Revenue
4 Code of 1954 shall not be taken into account under
5 section 6015 (d) in determining the estimated tax of such
6 taxpayer for any taxable year beginning after December
7 31, 1982 and before January 1, 1984.

8 (2) Wage withholding.--Any credit allowable under
9 section 44H of such Code shall not be taken into account
10 in determining the number of withholding exemptions to
11 which any taxpayer is entitled under section 3402 of such
12 Code with respect to remuneration paid after December 31,
13 1982 and before January 1, 1984.

2 AMT 3

new page

I. SUMMARY

Relief of the Jefferson County Mental Health Center

H.R. 1635, as passed the House, authorizes the payment of \$50,000 to the Jefferson County Mental Health Center, Lakewood, Colorado, in full settlement of its claim against the United States for repayment of social security taxes which the Center refunded to its employees after the Internal Revenue Service erroneously advised the Center that the taxes had been withheld erroneously.

1)
2)

The Committee on Finance approved the bill, with an amendment in the nature of a substitute—the Educational Opportunity and Equity Act of 1983—summarized below.

Tuition Tax Credit Provisions

The bill provides a nonrefundable credit for 50 percent of tuition expenses paid to elementary and secondary schools for certain qualified dependents of the taxpayer. The maximum credit is \$100 in 1983, \$200 in 1984, and \$300 in 1985 and subsequent years. The maximum credit amount is phased down for taxpayers with adjusted gross incomes of greater than \$40,000 and no credit is allowed for taxpayers with adjusted gross income of \$50,000 or more.

PROVIDE

PERA (T) must be attached to any return on which credit is claimed

For tuition expenses to be creditable, a school will have to file annually with the Treasury a statement indicating that it has not followed a racially discriminatory policy. A copy of this statement also will have to be furnished to each individual who pays tuition to the school. Furthermore, the bill authorizes the Attorney General, upon petition by an individual who claims to have been racially discriminated against or who alleges a specific act or communication that is evidence of a school's racially discriminatory policy, to seek a declaratory judgment, in a U.S. district court, that a school has a racially discriminatory policy.

of racial discrimination

generally

beginning after December 31, 1982

The bill applies to tuition paid or incurred after July 31, 1983, for taxable years ending after that date. However, no credits will be available until either a decision by the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under section 501(c)(3) of the Internal Revenue Code to private educational institutions that maintain racially discriminatory policies or practices as to students.

le / FINU
UNIT Resolution

(4)

by reason of section 501 (c)(3)

The substance of H.R. 1635 as passed by the House was included as section 290 of the Tax Equity and Fiscal Responsibility Act of 1982 (H.R. 4061), P.L. 97-248.

(1)
(4)

no new H

cannot follow a racially discriminatory policy. An eligible school will be required to include a statement of its nondiscriminatory policy in any published by-laws, admissions materials, and advertising, and to

Racial
discrimination

Final
Joint
Resolution

Reason of
Section 501

Credits will be effective on a ⁶prospective basis after such final decision, Act, or joint resolution.

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II. EXPLANATION OF THE BILL

A. Present Law

Tax benefits for educational expenses

Special rule for claiming dependency exemption for a child who is a student

In certain cases, taxpayers are entitled to a personal exemption for a dependent, which they otherwise could not claim, because the dependent is a student. Generally, a taxpayer may claim a \$1,000 personal exemption deduction for each dependent who has less than \$1,000 gross income for a taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and is under the age of 19 or is a student (Code sec. 151).

Income tax exclusion for scholarships and fellowships

Individuals generally may exclude from income amounts received as scholarships and fellowships (Code sec. 117). The exclusion also covers incidental amounts received to cover expenses for travel, research, clerical help, and equipment when they are expended for these purposes. The exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration (e.g., promises of future services) from the recipient, except in the case of certain Federal grants. Similarly, where an educational institution allows delayed payment of tuition, the Internal Revenue Service regards tuition postponement to be a loan and, therefore, not includible as income to the student (Rev. Rul. 72-2, 1972-1 C.B. 19).

In general, an amount that is received by an individual as a grant under a Federal program, which would be excludible from gross income but for the fact that the individual recipient is required to perform future services as a Federal employee, is excludible if the individual establishes that it was used for tuition and related expenses.

Deduction for "job-related" educational expenses

Education expenses which qualify as trade or business expenses under Code section 162 may be deducted. Expenditures made by an individual for his own education generally are deductible if they are for education which (1) maintains or improves skills required by the individual's employment or other trade or business or (2) meets the express requirements of the individual's employer or the requirements of applicable law or regulations imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation (Treas. Reg. sec.

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PART A

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1.162-5(a). These types of education commonly are called "job-related" education.

Income tax exclusion for amounts received under educational assistance programs

For taxable years beginning after December 31, 1978, and before December 31, 1983, amounts paid by an employer for an employee's educational expenses may be excluded from the employee's income if paid pursuant to a qualified educational assistance program (Code sec. 127). A qualified educational assistance program must be a separate written plan of an employer for the exclusive benefit of employees. The plan also must meet requirements with respect to nondiscrimination in contributions or benefits and in eligibility for enrollment, but it need not be funded or approved in advance by the Internal Revenue Service. For a program to qualify, the employees must be given adequate notification and must not be able to choose taxable benefits in lieu of the educational assistance.

Benefits which may be provided under the program include tuition, fees, and similar payments, books, supplies, and equipment. Covered studies need not be restricted to courses which are job-related or part of a degree program.¹ However, an employee claiming an exclusion under this section may not claim any other deduction or credit (e.g., a Code sec. 162 deduction for job-related education) with respect to any excludible benefits.

Tax-exempt bonds for student loans

Present law provides an exemption from taxation for the interest on bonds ("qualified scholarship funding bonds") issued by certain private, non-profit corporations to finance college student loan programs (Code secs. 103(a)(2) and (e)).

A qualified scholarship funding bond is an obligation of a non-profit corporation organized by, or requested to act by, a State or a political subdivision of a State (or a possession of the United States), solely to acquire student loan notes incurred under the Higher Education Act of 1965. The entire income of such a corporation (after payment of expenses and provision for debt service requirements) must accrue to the State or political subdivision, or be required to be used to purchase additional student loan notes.

Other tax provisions of benefit to education

Some provisions that benefit education, in general, and sometimes students, in particular, include the exclusion from income of gifts (Code sec. 102), which may comprise a large portion of a student's support, and the charitable contribution deduction (Code sec. 170), which allows a deduction for contributions to educational institutions. Other provisions, such as the exclusion of interest on State and municipal bonds (Code sec. 103) and the deduction for State and local taxes (Code sec. 164) indirectly assist publicly-supported educational institutions by easing the financial burden on State and local governments.

Charitable
Cost tuition
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¹ Generally, however, no exclusion is permitted for educational assistance furnished for courses involving sports, games, or hobbies.

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SMITH, G.

Effect of racial discrimination on tax-exempt status of private schools

The Internal Revenue Service issued a revenue ruling and a revenue procedure,² in 1971 and 1972, which state that private schools with racially discriminatory policies as to students will not be recognized as organizations exempt from Federal income tax. These documents also set forth guidelines for determining whether certain private schools have adequately publicized their racially nondiscriminatory policies so as to enable them to qualify for tax-exempt status.

Respectively

In 1975, the IRS published Revenue Procedure 75-50, 1975-2 C.B. 587, which sets forth guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies. This revenue procedure superseded Rev. Proc. 72-54, *supra*.

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In general, the 1975 guidelines provide that to obtain recognition of tax-exempt status under section 501(c)(3):

(1) A school must include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and, therefore, does not discriminate against applicants.

(2) The school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships.

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(3) The school must make its racially nondiscriminatory policy known to all segments of the general community served by the school.

(4) The school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner, and

(5) As a general rule, all scholarships or other comparable benefits procurable for use at the school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be known throughout the general community being served by the school and should be referred to in the publicity necessary to satisfy the third requirement in order for that school to be considered racially nondiscriminatory as to students.

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The procedure also requires that an individual authorized to act officially on behalf of a school which claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, that to the best of his knowledge and belief the school has satisfied the requirements listed in the procedure.

This

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The 1975 Revenue Procedure further provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discrimi-

² Rev. Rul. 71-447, 1971-2 C.B. 235 and Rev. Proc. 72-54, 1972-2 C.B. 534. These documents were issued in response to *Green v. Connally*, 330 F. Supp. 1150 (D.D.C.) aff'd per curiam sub nom. *Coit v. Green*, 404 U.S. 997 (1971), which held that racially discriminatory private schools are not entitled to the Federal tax exemption provided for educational organizations and that gifts to such schools are not deductible as charitable contributions by the donors.

Annual

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The committee is concerned with the rising cost of tuition at private elementary and secondary schools. At the same time, the cost of public schools is rising and taxes continue to increase to meet this cost. Parents who send their children to private schools however, relieve the public schools of the cost of educating their children. The committee believes that such parents, who must pay for the increased costs of both public and private schools, should receive tax relief for their children's educational expenses.

The Committee intends that the special

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The committee also believes that the existence of affordable alternatives to public education tend to strengthen public education through competition. This healthy competition should improve the educational opportunities for all Americans.

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3/ This prohibition was enacted in response to the fact that on August 21, 1978, the Internal Revenue Service announced prospective publication of a revenue procedure intended to revise administrative guidelines for determining whether a private school operates in a racially discriminatory manner. As a result of the reopening of litigation in Green v. Connally, supra, and Wright v. Miller, 480 F. Supp. 790 (D.D.C 1979), rev'd sub nom. Wright v. Regan, 656 F. 2d 820 (D.C. Cir. 1981), the IRS had concluded that its prior revenue procedures had not been effective in identifying schools that were discriminatory on the basis of race, even though they had professed an open enrollment policy and had complied with the requirements of Revenue Procedure 75-50.

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imply any view of this Committee on the existence

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natory policy as to students, while conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students.

Failure to comply with the guidelines set forth in Revenue Procedure 75-50 ordinarily results in the proposed revocation of the tax-exempt status of a school.

Through provisions enacted as part of appropriations legislation, the Congress has forbidden the Internal Revenue Service to develop or carry out any rulings, procedures, or other positions concerning tax exemption for racially discriminatory private schools beyond those that were in effect prior to August 22, 1978.

The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the U.S. Supreme Court in the cases of *Goldsboro Christian Schools, Inc. v. United States* (No. S1-1) and *Bob Jones University v. United States* (No. 81-3).

B. Reasons for Change

The committee is concerned with the rising cost of tuition at private elementary and secondary schools. At the same time, the cost of public schools is rising and taxes continue to increase to meet this cost. The committee believes that private school parents who must pay for the increased costs of both public and private schools, even though they relieve the public schools of the cost of educating their children, should receive tax relief for their children's educational expenses. The committee also feels that private schools represent an integral part of American society, reflecting the diversity of the country, and providing citizens with important opportunities to obtain the education they deem best suited to individuals' needs and family values. By assisting citizens to select and pay for private school education, the tax relief provided by this bill will reinforce and sustain the Nation's historic pattern of diversity in education.

The committee believes that tax benefits should not be available with respect to racially discriminatory schools. Consistent with the committee's view that the Internal Revenue Code currently prohibits Federal tax exemption for racially discriminatory private schools (or that the Code should be amended to so provide if the Supreme Court holds to the contrary), the nondiscrimination provisions of this bill are intended to supplement any nondiscrimination standards that must be satisfied in order for a private school to obtain Federal tax exemption. Neither the substantive nondiscrimination standards of the bill nor its enforcement procedures are intended to create any inference with regard to the nondiscrimination standards or enforcement procedures of present law. Thus, the committee's bill provides that no tuition tax credits will be available until a decision by the Supreme Court of the United States or an Act of Congress that prohibits the granting of tax-exempt status under Code section 501(c)(3) to private educational institutions that maintain racially discriminatory policies or practices as to students.

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C. Explanation of provisions

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Congressional findings

The bill contains a policy statement that sets forth several propositions that are based upon a Congressional finding that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. This policy statement concludes that the primary purpose of the bill is to enhance equality of educational opportunity, diversity, and choice for all Americans and that the bill will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

Credit for tuition expenses

Under the bill, an individual is allowed to claim a nonrefundable tax credit for 50 percent of the tuition expenses paid during the taxable year to one or more educational institutions for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions.

Eligible educational institutions and qualified tuition expenses

The credit will be available only with respect to tuition paid to certain educational institutions. An educational institution will have to meet the following requirements in order for tuition paid to it to be a creditable expense:

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- (1) It must provide a full-time program of elementary or secondary education;
- (2) It must be a privately operated, not-for-profit, day or residential school;
- (3) It must be exempt from taxation under Code section 501(c)(3).⁴ (Under the bill, church schools that currently are exempt from the requirement that they notify the Internal Revenue Service of their applications for recognition of tax-exempt status will continue to be so exempt.);
- (4) It must include in its by-laws, advertisements, admission application forms, and other such publications, if any, a statement that it does not discriminate against applicants or students on the basis of race (The form or manner for making this statement is to be prescribed by Treasury Regulations.);
- (5) It must not have an admissions policy that discriminates against handicapped children; and

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⁴ Dependents, the payment of whose tuition expenses will qualify for credit under the bill, will be any one of the following individuals over half of whose support is received from the taxpayer: (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, stepbrother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or her principal place of abode the home of the taxpayer and who is a member of the taxpayer's household. Except for the taxpayer's children, these individuals must have less than \$1,000 of gross income for the calendar year in order to be claimed as dependents.

⁵ These are organizations that are organized and operated exclusively for religious, charitable, educational, and other enumerated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.

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PART A

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Congressional findings

The bill contains a policy of the United States, and choice for all that the primary purpose of the bill will expand educational opportunity, and pluralism that in America.

Credit for tuition expenses

Under the bill, an individual who is a member of the taxpayer's household, will qualify for the credit. Except for the taxpayer's children, these individuals must have less than \$1,000 of gross income for the calendar year in order to be claimed as dependents.

Eligible educational institutions

The credit will be available for certain educational institutions that have to meet the following conditions to be a creditable institution:

- (1) It must provide secondary education;
- (2) It must be a private, non-profit, non-discriminatory school;
- (3) It must be exempt from Federal income tax as an organization described in section 170(c)(1)(B) of the Internal Revenue Code, or as a bill, church, school, or other organization, and must have a requirement that the institution accept and process their applications for admission and continue to be so exempt;
- (4) It must include application forms, and must have a requirement that it does not discriminate on the basis of race, sex, or handicap; and a statement is to be filed with the application;
- (5) It must not be operated for the benefit of any individual against handicapped persons.

Provided that over half of his or her support is received from the taxpayer, the payment of tuition expenses for (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, stepbrother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or principal place of abode the home of the taxpayer and who is a member of the taxpayer's household, will qualify for the credit. Except for the taxpayer's children, these individuals must have less than \$1,000 of gross income for the calendar year in order to be claimed as dependents.

³ Dependents, the payment of which is to be any one of the following individuals: (1) a son or daughter or a descendant of either;

The institution must provide a full-time program of elementary or secondary education. While, ordinarily, a vocational high school that offers a regular academic secondary school curriculum in addition to vocational courses, would qualify, a school that offered only vocational courses, such as stenographic courses, would not. The institution must be a privately operated, not-for-profit, day or residential school. The school also must be exempt from taxation under Code section 501(a) as an organization described in section 501(c)(3).

4/ These are organizations that are organized and operated exclusively for religious, charitable, educational, and other enumerated purposes; no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.

Under the bill, church schools that currently are exempt from the requirement that they notify the Internal Revenue Service of their applications for recognition of tax-exempt status will continue to be exempt.

While the bill does not require a private school to have bylaws, advertisements, admission application forms, or other such publications, if an institution does have any such publications they must include a statement that the institution does not discriminate against applicants or students on the basis of race. The form or manner for making this statement is to be prescribed by Treasury Regulations. Forms, brochures, and other publications printed before the effective date of this bill but distributed or used after that date must be amended or "stickered" with an appropriate statement of non-discrimination.

An eligible educational institution must not have an admissions policy that discriminates against handicapped children. A school may deny admission to a handicapped applicant where the school would be forced to make a special accomodation for the handicapped person, such as the installation of special facilities, the provision of special courses or programs, or the addition of more or specially trained teachers, in order adequately to teach the handicapped person those subjects taught non-handicapped students.

The bill sets forth guidelines for determining whether a school has an admissions policy that discriminates against handicapped children. Under the bill a school has an admissions

5/ For purposes of this requirement, the term "handicapped children" is defined in USC section 602, and means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

policy that discriminates against handicapped children if it refuses to admit otherwise qualified applicants solely on the basis of their status as handicapped children. Because the committee does not believe that schools should be required to undertake substantial additional costs in order to admit handicapped children, however, the bill further provides that a school which denies admission to any handicapped child will not be treated as having an admissions policy that discriminates against handicapped children if such denial results from the fact that the school does not have special programs and courses, special facilities, specially qualified personnel, or an adequate number of teachers to accommodate ~~such child's~~ *the handicapped* handicap. For example, where a school has a small number of teachers qualified to teach emotionally disturbed children, but has no special classes for the emotionally disturbed and is unable, without taking the specially qualified teachers away from other duties, to provide such classes, it may deny admission to applicants with emotional handicaps which would prevent their full participation in regular classes.

Finally, attendance at the school must satisfy the requirements of any law of the State in which it is located, or in which a student resides, which requires children to attend school. A school, attendance at which satisfies the compulsory education laws of the state in which a student resides, need not satisfy the compulsory education laws of the state in which the school is located for such student's parents to claim a credit.

R SMITH, C.
SEP 21 1982

(6) Attendance at the school must satisfy the requirements of any law of the State in which it is located, or in which a student resides, which requires children to attend school.

The bill sets forth guidelines for determining whether a school has an admissions policy that discriminates against handicapped children.⁵ Under the bill a school has an admissions policy that discriminates against handicapped children if it refuses to admit otherwise qualified applicants solely on the basis of their status as handicapped children. Because the committee does not believe that schools should be required to undertake substantial additional costs in order to admit handicapped children, however, the bill further provides that a school which denies admission to any handicapped child will not be treated as having an admissions policy that discriminates against handicapped children if such denial results from the fact that the school does not have special programs and services, special facilities, or specially qualified personnel to deal adequately with such child's handicap.

Tuition expenses eligible for the credit are tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including fees for courses. However, amounts paid for (1) books, supplies, and equipment for courses of instruction; (2) meals, lodging, transportation, or personal living expenses; (3) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; and (4) education above the twelfth-grade level are not eligible for the credit.

Limitations on credit amount

The credit will be subject both to a maximum dollar amount and a phase-out based upon the amount of a taxpayer's adjusted gross income. Both the maximum dollar amount of the credit and the maximum phase-out rate will be phased in over a three-year period.

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent will be:

(1) \$100 in the case of tuition expenses paid or incurred July 31, 1983, in taxable years ending after that date;

(2) \$200 in the case of tuition expenses paid or incurred after December 31, 1983, in taxable years ending after that date; and

(3) \$300 in the case of tuition expenses paid or incurred after December 31, 1984, in taxable years ending after that date.

The maximum credit amount will be reduced by a specified percentage of the amount by which a taxpayer's adjusted gross income for the taxable year exceeds \$40,000 (\$20,000 in the case of a married individual filing a separate return). The phase-out rate will be 1.0 percent for taxable years ending after July 31, 1983; 2.0 percent for taxable years ending after December 31, 1983; and 3.0 percent for taxable years ending after December 31, 1984. These percentage phase-out rates are doubled for married individuals filing separate returns. Thus, a taxpayer with adjusted gross income of \$50,000 or

⁵ For purposes of this requirement, the term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

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10 7 However, any tuition tax credits available to any taxpayer may not be taken into account in determining the estimated tax of such taxpayer for any taxable year beginning before January 1, 1984 or in determining the number of withholding exemptions to which any taxpayer is entitled with respect to remuneration paid before January 1, 1984.

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- (1) \$100 in the taxable year ending 12/31, 1983, in tax
- (2) \$200 in the taxable year ending 12/31, 1984, in tax
- (3) \$300 in the taxable year ending 12/31, 1985, in tax

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more (\$25,000 in the case of a married individual filing a separate return) will receive no tax credit.

Special rules

Under the bill, otherwise eligible tuition expenses will be reduced by certain amounts paid to the taxpayer or his dependents. These amounts are: (1) amounts received from tax-free scholarship or fellowship grant; (2) certain Veterans benefits; and (3) other tax-exempt educational financial assistance (except for exclusive gifts, bequests, devises, or inheritances).

~~In addition, the bill provides that a taxpayer may not claim any allowable deduction or credit for tuition expenses that have been taken into account in determining the allowable tuition tax credit. However, the taxpayer may elect not to claim the tuition tax credit and, instead, claim other allowable deductions or credits.~~

Anti-discrimination provisions

No tax credit will be permitted for tuition payment to schools that have racially discriminatory policies.

Under the bill, an educational institution has a racially discriminatory policy if it refuses, on account of race (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs. A racially discriminatory policy does include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term "race" includes color or national origin.

A school will be required to file annually with the Internal Revenue Service a statement declaring that it has not followed a racially discriminatory policy and also must indicate whether the Attorney General has brought a declaratory judgment action against it during the current, or any of the two preceding, calendar years. The statement also must indicate whether the school has complied with the requirement that it include a statement of nondiscriminatory policy in its by-laws, application forms, etc. The nondiscrimination statement must be furnished to each person who pays tuition to the school, and a taxpayer claiming the credit must attach a copy to his return.

Declaratory judgment proceedings

The bill provides that, upon the filing of an appropriate pleading by the Attorney General, the district court of the United States for the district in which a school is located may make a declaration with respect to whether such school follows a racially discriminatory policy. This declaration will have the force and effect of a final judgment of the district court and will be reviewable as such.

Under the bill, the Attorney General is authorized and directed to seek a declaratory judgment against a school after receiving a written allegation of discrimination against the school and finding good cause. This written allegation must allege with specificity that the school has, pursuant to a racially discriminatory policy, discriminated against a student applicant or student within one year preceding the date on which the allegation is made, or that the

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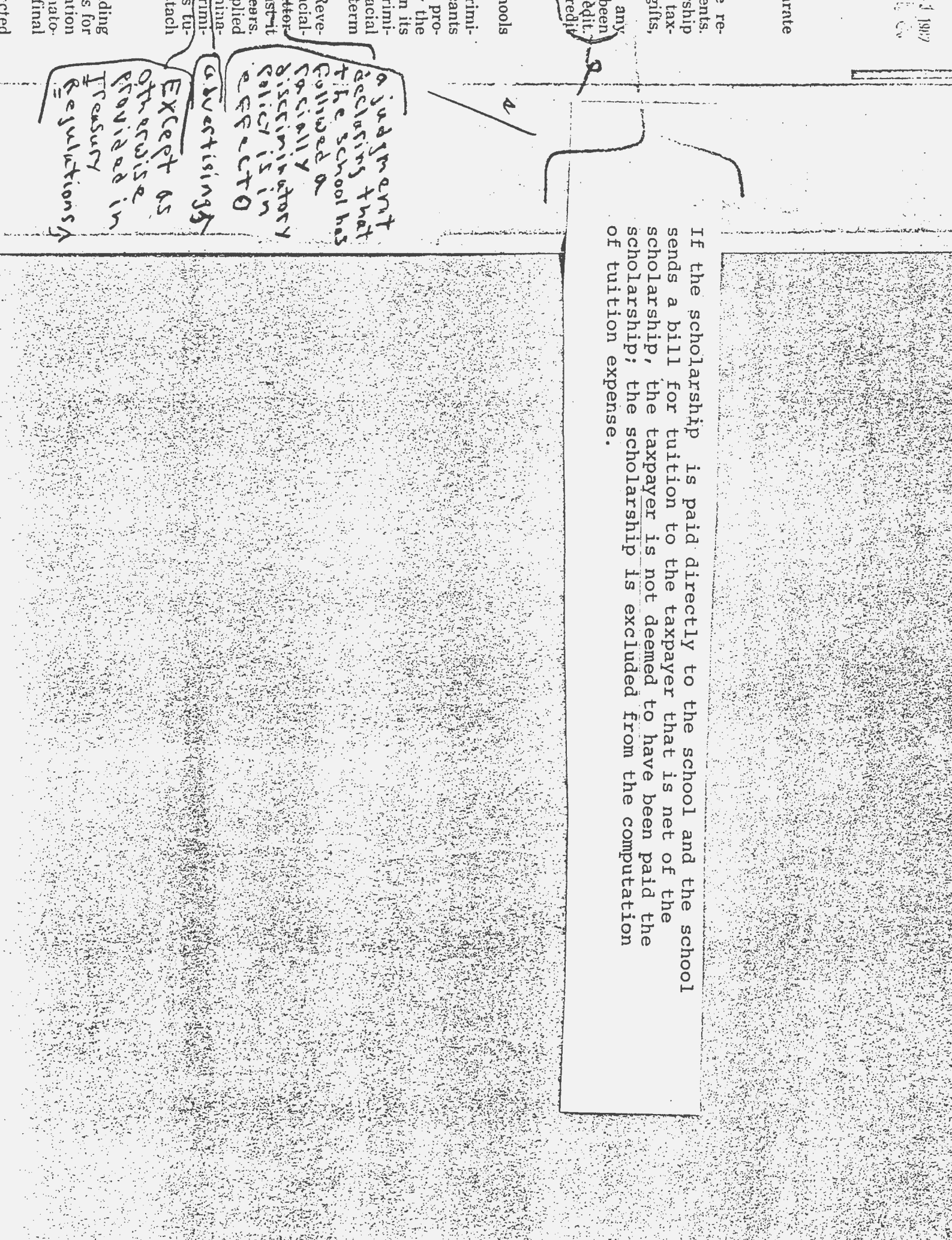
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If the scholarship is paid directly to the school and the school sends a bill for tuition to the taxpayer that is net of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense.

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It is anticipated that regulations shall provide that such statement need not be provided to parents who certify to the school that they will not claim a credit for tuition paid to such school.

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school has made a statement, within one year preceding the date on which the allegation is made, communicating an intent to follow a racially discriminatory policy.

The Attorney General is required, upon receipt of a written allegation, promptly to notify the school, in writing, of the existence of the allegation. Before commencing a declaratory judgment action, the Attorney General also is required to give the school a fair opportunity to comment on the allegations made against it, and to show that the racially discriminatory policy alleged in the written allegation either does not exist or has been abandoned.

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If the Attorney General determines there is not good cause for seeking a declaratory judgment against the school, he must notify the person who brought the petition of the reasons therefore and must provide that person with the comments submitted by the school.

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The bill provides that a district court may declare that a school follows a racially discriminatory policy, in a declaratory judgment action, only if the Attorney General establishes that:

- (1) The school has, pursuant to such policy, taken an action discriminating against a student applicant or student within the two years preceding commencement of the action;
- (2) The school has, within 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) The school 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. Any district court that makes a declaration that a school follows a racially discriminatory policy will retain jurisdiction of the case.

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Instead of filing a declaratory judgment action, the Attorney General may, at his discretion, enter into a settlement agreement with a school against which an allegation of discrimination has been made. However, before doing so, the Attorney General must find that the school has been acting in good faith and has abandoned its racially discriminatory policy. If the school violates the settlement agreement, then no subsequent allegation need be filed before the Attorney General can initiate a discriminatory judgment proceeding, enforce the terms of the settlement.

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Attorneys fees

The bill provides for the award of attorneys fees to any school that is found, in a discriminatory judgment proceedings, not to be racially discriminatory.

Discontinuance of racially discriminatory policy

The bill provides that a school against which a declaratory judgment has been rendered may, at any time after one year from the date of the judgment, file with the district court a motion to modify the judgment to include a declaration that the school no longer follows a racially discriminatory policy. This motion must contain affidavits that:

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41 In describing the requirements for making an allegation of discrimination, or the requirements for prevailing in a declaratory judgment action against a school, the bill's references to statements made by a school are intended to include statements of employees, officers, or agents of the school that communicate the school's intent to follow a racially discriminatory policy. In describing the requirements for prevailing in a declaratory judgment action pursuant to a racially discriminatory policy is not intended to create any inference that a single act of discrimination, without more, could not constitute evidence of a racially discriminatory policy.

The bill authorizes the district court to award costs and reasonable attorneys fees to a school prevailing in a declaratory judgment proceeding brought by the Attorney General. The committee anticipates that the courts will award attorneys fees where circumstances would make such an award unjust. However, it is anticipated that the courts will take into account the financial burden that may be imposed on a private school in defending against a declaratory judgment action under this bill.

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he must make available to the complainant the information on which the Attorney General based his decision, with the exception of information submitted by the school, which violate any law protecting personal privacy or confidentiality. The Attorney General must also notify the complainant of the availability of this information.

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A copy of any settlement agreement must be furnished to the complainant whose allegations resulted in the Attorney General's investigation.

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The committee anticipates that settlement agreement may provide that a violation of the terms of the settlement will constitute an act in furtherance of a pattern of conduct intended to implement a racially discriminatory policy. Thus, violation of the terms of a settlement could lead promptly to a declaratory judgment disallowing credits.

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- (1) Describe in specificity the ways in which the school has changed its previous racially discriminatory policy;
- (2) Describe with specificity the ways in which the school 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 that it serves;
- (3) Avers that the school has not discriminated against an applicant or student pursuant to a racially discriminatory policy during the preceding year; and

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- (4) ~~Avers that the school has complied with the requirement that it indicate its nondiscriminatory policy in its bylaws, advertisements, admission applications, etc.~~

The motion by the school will be granted unless the Attorney General establishes that:



- (1) The school has not, in fact, stopped following its previous discriminatory policy;
- (2) The school has discriminated, within the preceding year, against an applicant or student pursuant to a racially discriminatory policy;
- (3) The school has, within the preceding year, made statements communicating an intent to follow a racially discriminatory policy; or
- (4) The school has not, in fact, complied with the nondiscrimination publication requirements.

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Period of disallowance of tax credits

The bill provides that no credit will be allowed for amounts paid to a school during any calendar year if within that year, or in any preceding year, a judgment has been entered by a district court declaring that the school follows a racially discriminatory policy, unless a motion to reinstate credits has been granted. If a declaratory judgment against a school is rendered, and all appeals have been exhausted, then eligibility for tax credits will be allowed on a retroactive basis. In the case of the reversal of an initial district court judgment in favor of a school, tax credits will be disallowed from the calendar year in which the judgment reversing the district court is entered.

The bill extends the statute of limitations in the event that a district court declaratory judgment against a school is reversed on appeal.

Furthermore, the statute of limitations for assessing deficiencies against individuals who claim tuition tax credits is extended in the event that a district court declaratory judgment against a school is stayed pending appeal. If a stay is entered and the decision of the district court is subsequently affirmed, then the period for disallowance of credits commences with the year in which the district court judgment was entered. The committee understands that a stay of a declaratory judgment against a school will be granted only in a rare situation where there is a probability that the district court judgment was in error and that irreparable injury may occur absent a stay.

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will The committee anticipates that the requirement that a school take reasonable steps to communicate its nondiscriminatory policy ~~would~~ be satisfied if the school takes vigorous steps to make known its nondiscriminatory policy, that are reasonable in light of the school's financial resources.

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~~Period of disallowance of tax credits~~

No credits will be allowed for amounts paid to a school during the period in which a declaratory judgment against the school is in effect. Generally, a declaratory judgment is in effect beginning with the calendar year in which it is entered by the district court, whether or not it is appealed. The period of disallowance ends only if a motion to réinstate credits is granted by the district court. In that event, credits are again allowed beginning with the year the motion is granted by the district court, whether or not that motion is appealed. If a district court judgment in favor of a school is reversed on appeal, the period of disallowance begins with the earlier of the calendar year in which a subsequent district court judgment against the school is entered on remand, or in which the court of appeals entered an order that would require the district court to enter such a judgment. (This rule is intended to prevent a delay in the beginning of the period of disallowance if a stay of such an appellate order is entered pending further proceedings.) If all judgments against a school entered in an action are subsequently reversed or vacated, all credits disallowed on the basis of any district court judgments in the action will be allowable. However, credits for that period will not be allowed until the action is finally concluded. Accordingly, the period for filing a refund claim will be extended.

A similar rule (including an extension of the limitations period for determining deficiencies) applies if an order reinstating credits is subsequently reversed on appeal.

If a declaratory judgment against a school (or an appellate order requiring such a judgment) is entered but stayed, credits will not be disallowed until the stay is vacated, but the period of disallowance will begin with the year in which the judgment or order is entered. Accordingly, the ~~statement~~ ^{Statute} of limitations for determining deficiencies will also be extended in that event. The committee anticipates that stays will be entered only in extraordinary circumstances where the school demonstrates the traditional requirements for obtaining a stay of an injunctive order pending appeal. In the committee's view, this strict

Footnote 1 to be supplied.

standd is appropriate, inasmuch as the effect of a stay in this context is tantamount to the effect of an order restraining the assessment or collection of taxes.

See Section 2421, Internal Revenue Code of 1954, Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962)

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Enforcement responsibility

The bill vests exclusive authority to enforce the prohibition against following a racially discriminatory policy, or to undertake activities connected with enforcement, in the Attorney General. The Secretary of the Treasury is directed to provide the Attorney General with any information relevant to his investigations and actions. Furthermore, the Secretary has the authority to receive the annual nondiscrimination statements; to disallow credits for tuition paid to schools that have not filed such statements or that have failed to comply with the anti-discrimination publication requirements; to disallow credits for taxpayers who fail to comply with procedures for claiming the credit; and to disallow credits for tuition paid to schools against which declaratory judgments have been rendered.

The declaratory judgment provisions

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Reports by Attorney General

The bill requires the Attorney General to report annually to the Congress on his anti-discrimination enforcement activities. These reports should include a description of all activities undertaken pursuant to petitions filed with the Attorney General.

Credit not to be considered as Federal assistance

The bill provides that tuition tax credits will not constitute Federal financial assistance to educational institutions or the recipients thereof.

D. Effective date

The bill is generally effective for tuition payments made after July 31, 1983. However, no credits will be available until either a decision of the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under Code section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

501(c)(3) by reason of

E.) Revenue effect

It is estimated that this provision will reduce budget receipts by \$229 million in fiscal year 1984, \$491 million in fiscal year 1985, \$703 million in fiscal year 1986, and \$726 million in fiscal year 1987.

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III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 1635

Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of H.R. 1635, as reported.

Budget receipts

The table below summarizes the estimates of decreases in budget receipts from the allowance of tuition tax credits provided by the bill for fiscal year 1983-1987:

FISCAL YEAR				
[Millions of dollars]				
1983	1984	1985	1986	1987
0	-229	-491	-703	-726

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The Treasury Department agrees with their statement.

Budget outlays

The bill involves no new budget outlays.

3 → *Vote of the Committee*

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 1635, as amended, was ordered favorably reported by a rollcall vote of 12 ayes and 6 noes.

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IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of this bill.

A. *Numbers of individuals and businesses who would be regulated.*—The bill does not involve new or expanded regulation of individuals or businesses.

B. *Economic impact of regulation on individuals, consumers and businesses.*—The bill does not involve economic regulation.

C. *Impact on personal privacy.*—This bill does not relate to the personal privacy of individual taxpayers.

D. *Determination of the amount of paperwork.*—The bill will increase paperwork for educational institutions to which the payment of tuition is eligible for credit and for individuals who are eligible to claim the credit. This additional paperwork results from the bill's requirement that eligible educational institutions must file annual nondiscrimination statements with the Treasury and that individuals claiming the credit must attach those statements to their Federal income tax returns.

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates and agrees with the methodology used and the resulting dollar amounts (as shown in Part III of this report).

New Budget Authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill does not create new budget authority.

Tax Expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee makes the following statement.

The bill creates a new tax expenditure by providing a credit against income tax for individuals who pay tuition to eligible educational institutions. The amount of the tax expenditure are shown in Part III, above.

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V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, H.R. 1635, as reported by the committee).

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97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-

THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF
1982

22) _____
SEPTEMBER 21 (legislative day, _____), 1982.—Ordered to be printed

Mr. DOLE, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 1635]

The Committee on Finance, to which was referred the bill (H.R. 1635) for the relief of the Jefferson County Mental Health Center, Lakewood, Colorado, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

The amendment is shown in the text of the bill in italic.

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PART A