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

IN THE SENATE OF THE UNITED STATES

Mr. SCOTT of South Carolina (for himself and Mr. ALEXANDER) introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “School Choice Now
5 Act”.
TITLE I—EMERGENCY
EDUCATION FREEDOM GRANTS
SEC. 101. EMERGENCY EDUCATION FREEDOM GRANTS.

(a) DEFINITIONS.—In this title:

(1) DEFINITIONS FROM THE INTERNAL REVENUE CODE OF 1986.—The definitions in section 25E(c) of the Internal Revenue Code of 1986, as added by section 201, shall apply to this section, except as otherwise provided.

(2) EMERGENCY EDUCATION FREEDOM GRANT FUNDS.—The term “emergency education freedom grant funds” means the amount of funds available under subsection (b)(1) for this section that are not reserved under subsection (c)(1).

(3) SECRETARY.—The term “Secretary” means the Secretary of Education.

(4) STATE.—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) GRANTS.—

(1) PROGRAM AUTHORIZED.—From any amounts appropriated for section 18003 of division B of the CARES Act on or after the date of enactment of this Act, the Secretary shall, notwithstanding any other provision of title XVIII of divi-
sion B of the CARES Act (Public Law 116–136),

use 10 percent of such amounts to carry out sub-
section (c) and award emergency education freedom
grants to States with approved applications, in order
to enable the States to award subgrants to eligible
scholarship-granting organizations under subsection
(d).

(2) TIMING.—The Secretary shall make the al-
lotments required under this subsection by not later
than 30 days after the date of enactment of this
Act.

(c) RESERVATION AND ALLOTMENTS.—

(1) IN GENERAL.—From the amounts made
available under subsection (b)(1), the Secretary
shall—

(A) reserve—

(i) one-half of 1 percent for allotments
for the United States Virgin Islands,
Guam, American Samoa, and the Com-
monwealth of the Northern Mariana Is-
lands, to be distributed among those out-
lying areas on the basis of their relative
need, as determined by the Secretary, in
accordance with the purpose of this title;
and
(ii) one-half of 1 percent of such amounts for the Secretary of the Interior, acting through the Bureau of Indian Education, to be used to provide subgrants described in subsection (d) to eligible scholarship-granting organizations that serve students attending elementary schools or secondary schools operated or funded by the Bureau of Indian Education; and

(B) subject to paragraph (2), allot each State that submits an approved application under this section the sum of—

(i) the amount that bears the same relation to 20 percent of the emergency education freedom grant funds as the number of individuals aged 5 through 17 in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals, as so determined, in all such States that submitted approved applications; and

(ii) an amount that bears the same relationship to 80 percent of the emergency education freedom grant funds as the number of individuals aged 5 through 17 from
families with incomes below the poverty line in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals, as so determined, in all such States that submitted approved applications.

(2) Minimum Allotment.—No State shall receive an allotment under this subsection for a fiscal year that is less than one-half of 1 percent of the amount of emergency education freedom grant funds available for such fiscal year.

(d) Subgrants to Eligible Scholarship-Granting Organizations.—

(1) In General.—A State that receives an allotment under this section shall use the allotment to award subgrants, on a basis determined appropriate by the State, to eligible scholarship-granting organizations in the State.

(2) Initial Timing.—

(A) States with existing tax credit scholarship program.—By not later than 30 days after receiving an allotment under subsection (c)(1)(B), a State with an existing, as of the date of application for an allotment
under this section, tax credit scholarship program shall use not less than 50 percent of the allotment to award subgrants to eligible scholarship-granting organizations in the State.

(B) States without tax credit scholarship programs.—By not later than 60 days after receiving an allotment under subsection (c)(1)(B), a State without a tax credit scholarship program shall use not less than 50 percent of the allotment to award subgrants to eligible scholarship-granting organizations in the State.

(3) Uses of funds.—An eligible scholarship-granting organization that receives a subgrant under this subsection—

(A) may reserve not more than 5 percent of the subgrant funds for public outreach, student and family support activities, and administrative expenses related to the subgrant; and

(B) shall use not less than 95 percent of the subgrant funds to provide qualifying scholarships for qualified expenses only to individual elementary school and secondary school students who reside in the State in which the eligible scholarship-granting organization is recognized.
(c) Reallocation.—A State shall return to the Secretary any amounts of the allotment received under this section that the State does not award as subgrants under subsection (d) by March 30, 2021, and the Secretary shall reallocate such funds to the remaining eligible States in accordance with subsection (c)(1)(B).

(f) Rules of Construction.—The rules of construction under section 25E(d) of the Internal Revenue Code of 1986, as added by section 201, shall apply to this section in the same manner as such rules apply to section 25E of such Code, as so added.

TITLE II—TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-GRANTING ORGANIZATIONS

SEC. 201. TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-GRANTING ORGANIZATIONS.

(a) Credit for Individuals.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding after section 25D the following new section:

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

“(a) Allowance of Credit.—Subject to section 202(c) of the School Choice Now Act, in the case of an
individual, there shall be allowed as a credit against the
tax imposed by this chapter for the taxable year an
amount equal to the sum of any qualified contributions
made by the taxpayer during the taxable year.

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

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

“(1) ELIGIBLE SCHOLARSHIP-GRA NTING ORG A-
IZATION.—The term ‘eligible scholarship-granting
organization’ means—

“(A) an organization that—

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

and exempt from taxation under section

501(a),

“(ii) provides qualifying scholarships
to individual elementary and secondary

students who—

“(I) reside in the State in which

the eligible scholarship-granting orga-
nization is recognized, or

“(II) in the case of the Bureau of

Indian Education, are members of a

federally recognized tribe,
“(iii) a State identifies to the Secretary as an eligible scholarship-granting organization under section 202(c)(5)(B) of the School Choice Now Act,

“(iv) allocates at least 90 percent of qualified contributions to qualifying scholarships on an annual basis, and

“(v) provides qualifying scholarships to—

“(I) more than 1 eligible student,
“(II) more than 1 eligible family, and
“(III) different eligible students attending more than 1 education provider, or

“(B) an organization that—

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

“(ii) pursuant to State law, was able, as of January 1, 2021, to receive contributions that are eligible for a State tax credit if such contributions are used by the organization to provide scholarships to individual elementary and secondary students,
including scholarships for attending private schools.

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

“(3) QUALIFIED EXPENSE.—The term ‘qualified expense’ means any educational expense that is—

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

“(B) for the secondary education component of an individual elementary or secondary student’s career and technical education, as defined by section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(5)).

“(4) QUALIFYING SCHOLARSHIP.—The term ‘qualifying scholarship’ means a scholarship granted by an eligible scholarship-granting organization to an individual elementary or secondary student for a qualified expense.

“(5) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the outlying areas (as de-
fined in section 1121(e) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331(e)), and the Department of the Interior (acting through the Bureau of Indian Education).

“(d) RULES OF CONSTRUCTION.—

“(1) IN GENERAL.—A qualifying scholarship awarded to a student from the proceeds of a qualified contribution under this section shall not be considered assistance to the school or other educational provider that enrolls, or provides educational services to, the student or the student’s parents.

“(2) EXCLUSION FROM INCOME.—Gross income shall not include any amount received by an individual as a qualifying scholarship and such amount shall not be taken into account as income or resources for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of such benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

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

“(A)(i) Nothing in this section shall be construed to permit, allow, encourage, or au-
authorize any Federal control over any aspect of
any private, religious, or home education pro-
vider, whether or not a home education provider
is treated as a private school or home school
under State law.

“(ii) This section shall not be construed to
exclude private, religious, or home education
providers from participation in programs or
services under this section.

“(B) Nothing in this section shall be con-
strued to permit, allow, encourage, or authorize
an entity submitting a list of eligible scholar-
ship-granting organizations on behalf of a State
pursuant to section 202(c)(5) of the School
Choice Now Act to mandate, direct, or control
any aspect of a private or home education pro-
vider, regardless of whether or not a home edu-
cation provider is treated as a private school
under State law.

“(C) No participating State or entity act-
ing on behalf of a State pursuant to section
202(c)(5) of the School Choice Now Act shall
exclude, discriminate against, or otherwise dis-
advantage any education provider with respect
to programs or services under this section based
in whole or in part on the provider’s religious
character or affiliation, including religiously-

based or mission-based policies or practices.

“(4) Parental rights to use scholarships.—No participating State or entity acting on
behalf of a State pursuant to section 202(c)(5) of
the School Choice Now Act shall disfavor or discourage the use of qualifying scholarships for the pur-

chase of elementary and secondary education services, including those services provided by private or

nonprofit entities, such as faith-based providers.

“(5) State and local authority.—Nothing in this section shall be construed to modify a State
or local government’s authority and responsibility to fund education.

“(e) Denial of double benefit.—The Secretary shall prescribe such regulations or other guidance to ensure that the sum of the tax benefits provided by Federal, State, or local law for a qualified contribution receiving a Federal tax credit in any taxable year does not exceed the sum of the qualified contributions made by the taxpayer for the taxable year.

“(f) Carryforward of credit.—If a tax credit allowed under this section is not fully used within the applicable taxable year because of insufficient tax liability on
the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years.

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

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

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

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

(c) CREDIT FOR CORPORATIONS.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 45U. CONTRIBUTIONS TO ELIGIBLE SCHOLARSHIP-GRANTING ORGANIZATIONS.

“(a) ALLOWANCE OF CREDIT.—Subject to section 202(e) of the School Choice Now Act, for purposes of section 38, in the case of a domestic corporation, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum
of any qualified contributions (as defined in section 25E(e)(2)) made by such corporation taxpayer during the taxable year.

“(b) Amount of Credit.—The credit allowed under subsection (a) for any taxable year shall not exceed 5 percent of the taxable income (as defined in section 170(b)(2)(D)) of the domestic corporation for such taxable year.

“(c) Additional Provisions.—For purposes of this section, any qualified contributions made by a domestic corporation shall be subject to the provisions of section 25E (including subsection (d) of such section), to the extent applicable.

“(d) Election.—This section shall apply to a taxpayer for a taxable year only if the taxpayer elects to have this section apply for such taxable year.”.

(d) Credit Part of General Business Credit.—Section 38(b) is amended—

(1) by striking “plus” at the end of paragraph (32);

(2) by striking the period at the end of paragraph (33) and inserting “, plus”; and

(3) by adding at the end the following new paragraph:
“(34) the credit for qualified contributions determined under section 45U(a).”.

(c) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

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

(f) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 202. EDUCATION FREEDOM SCHOLARSHIPS WEB PORTAL AND ADMINISTRATION.

(a) In General.—The Secretary of Treasury shall, in coordination with the Secretary of Education, establish, host, and maintain a web portal that—

(1) lists all eligible scholarship-granting organizations;

(2) enables a taxpayer to make a qualifying contribution to 1 or more eligible scholarship-granting organizations and to immediately obtain both a pre-approval of a tax credit for that contribution and a receipt for tax filings;

(3) provides information about the tax benefits under sections 25E and 45U of the Internal Revenue Code of 1986; and

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

(A) student eligibility;
(B) allowable educational expenses;
(C) the types of allowable education pro-
viders;
(D) the percentage of funds an organiza-
tion may use for program administration; and
(E) the percentage of total contributions
the organization awards in a calendar year.

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

(c) NATIONAL AND STATE LIMITATIONS ON CRED-
ITS.—

(1) NATIONAL LIMITATION.—For each fiscal
year, the total amount of qualifying contributions for
which a credit is allowed under sections 25E and
45U of the Internal Revenue Code of 1986 shall not
exceed $5,000,000,000.
(2) ALLOCATION OF LIMITATION.—

(A) INITIAL ALLOCATIONS.—For each calendar year, with respect to the limitation under paragraph (1), the Secretary of the Treasury, in consultation with the Secretary of Education, shall—

(i) allocate to each State an amount equal to the sum of the qualifying contributions made in the State in the previous year; and

(ii) from any amounts remaining following allocations made under clause (i), allocate to each participating State an amount equal to the sum of—

(I) an amount that bears the same relationship to 20 percent of such remaining amount as the number of individuals aged 5 through 17 in the State, as determined by the Secretary of Education on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined; and
(II) an amount that bears the same relationship to 80 percent of such remaining amount as the number of individuals aged 5 through 17 from families with incomes below the poverty line in the State, as determined by the Secretary of Education, on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined.

(B) MINIMUM ALLOCATION.—Notwithstanding subparagraph (A), no State receiving an allocation under this section may receive less than one-half of 1 percent of the amount allocated for a fiscal year.

(C) ALTERNATIVE ALLOCATION.—

(i) IN GENERAL.—Not later than the end of the fifth year of the program or 1 year after the end of the first fiscal year for which the total amount of credits claimed under section 25E and section 45U of the Internal Revenue Code of 1986 is $2,500,000,000 or more, whichever comes first, the Secretary of the Treasury,
in consultation with the Secretary of Education, shall, by regulation, provide for an alternative allocation method that shall take effect beginning with the first fiscal year after such regulation takes effect.

(ii) ALTERNATIVE ALLOCATION METHOD.—The alternative allocation method shall be expressed as a formula based on a combination of the following data for each State, as reported by the State to the Secretary of Treasury:

(I) The relative percentage of students in the State who receive an elementary or secondary scholarship through a State program that is financed through State tax-credited donations or appropriations and that permits the elementary or secondary scholarship to be used to attend a private school.

(II) The total amount of all elementary and secondary scholarships awarded through a State program that is financed through State tax-credited donations or appropriations
compared to the total amount of current State and local expenditures for free public education in the State.

(iii) ALLOCATION FORMULA.—For any fiscal year to which clause (i) applies, the Secretary of Treasury, in consultation with the Secretary of Education, shall—

(I) for each State, allocate an amount equal to the sum of the qualifying contributions made in the State in the previous year;

(II) allocate $\frac{2}{3}$ of the remaining amount (after application of subclause (I)) of the national limitation for that year using the alternative allocation method under clause (ii); and

(III) allocate $\frac{1}{3}$ of the remaining amount (after application of subclause (I) and (II)) in accordance with subparagraph (A)(ii).

(iv) INELIGIBILITY.—For any fiscal year to which clause (i) applies, a State that does not provide the Secretary of the Treasury with information described in clause (ii) is not eligible to receive an allo-
ation through the alternative allocation method under such clause.

(3) ALLOWABLE PARTNERSHIPS.—A State may choose to administer the allocation it receives under paragraph (2) in partnership with 1 or more States, provided that the eligible scholarship-granting organizations in each partner State serve students who reside in all States in the partnership.

(4) TOTAL ALLOCATION.—A State’s allocation, for any fiscal year, is the sum of the amount determined for such State under subparagraphs (A) and (B) of paragraph (2), except as provided in paragraph (2)(C).

(5) ALLOCATION AND ADJUSTMENTS.—

(A) INITIAL ALLOCATION TO STATES.—Not later than November 1 of the year preceding a year for which there is a national limitation on credits under paragraph (1) (referred to in this section as the “applicable year”), or as early as practicable with respect to the first year, the Secretary of the Treasury shall announce the State allocations under paragraph (2) for the applicable year.

(B) LIST OF ELIGIBLE SCHOLARSHIP-GRANTING ORGANIZATIONS.—
(i) IN GENERAL.—Not later than January 1 of each applicable year, or as early as practicable with respect to the first year, each State shall provide the Secretary of the Treasury a list of eligible scholarship-granting organizations, including a certification that the entity submitting the list on behalf of the State has the authority to perform this function.

(ii) RULE OF CONSTRUCTION.—Neither this section nor any other Federal law shall be construed as limiting the entities that may submit the list on behalf of a State.

(C) REALLOCATION OF UNCLAIMED CREDITS.—The Secretary of the Treasury shall reallocate a State’s allocation to other States, in accordance with paragraph (2), if the State—

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

(ii) does not have an existing eligible scholarship-granting organization.

(D) REALLOCATION.—On or after April 1 of any applicable year, the Secretary of the
Treasury may reallocate, to 1 or more other States that have eligible scholarship-granting organizations in the States, without regard to paragraph (2), the allocation of a State for which the State’s allocation has not been claimed.

(d) Definitions.—Any term used in this section which is also used in section 25E of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section.