117TH CONGRESS
2D SESSION

H. R. ______

To amend the Internal Revenue Code of 1986 to allow a credit against tax for charitable donations to nonprofit organizations providing education scholarships to qualified elementary and secondary students.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WALORSKI introduced the following bill; which was referred to the Committee on ____________________

A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against tax for charitable donations to nonprofit organizations providing education scholarships to qualified elementary and secondary students.

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 “Educational Choice
5 for Children Act”.

(Original Signature of Member)
SEC. 2. TAX CREDIT FOR CONTRIBUTIONS TO SCHOLARSHIP GRANTING ORGANIZATIONS.

(a) Credit for Individuals.—

(1) In general.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25D the following new section:

“SEC. 25E. QUALIFIED ELEMENTARY AND SECONDARY EDUCATION SCHOLARSHIPS.

“(a) Allowance of Credit.—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 amount of qualified contributions made by the taxpayer during the taxable year.

“(b) Amount of Credit.—The credit allowed under subsection (a) in any taxable year shall not exceed an amount equal to the greater of—

“(1) 10 percent of the adjusted gross income of the taxpayer for the taxable year, or

“(2) $2,000.

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

“(1) Eligible Student.—The term ‘eligible student’ means an individual who—

“(A) is a member of a household with an income which is not greater than 300 percent
of the area median gross income (as such term is used in section 42), and

“(B) is eligible to enroll in a public elementary or secondary school.

“(2) QUALIFIED CONTRIBUTION.—The term ‘qualified contribution’ means a charitable contribution (as defined by section 170(c)) to a scholarship granting organization in the form of cash or marketable securities.

“(3) QUALIFIED ELEMENTARY OR SECONDARY EDUCATION EXPENSE.—The term ‘qualified elementary or secondary education expense’ has the same meaning given the term ‘qualified higher education expenses’ under paragraph (3) of section 529(e), except that such paragraph shall be applied—

“(A) by substituting ‘elementary school or secondary school (as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801))’ for ‘eligible educational institution’ each place it appears, and

“(B) in subparagraph (B) thereof, by substituting ‘such school’ for ‘such institution’ each place it appears.
“(4) SCHOLARSHIP GRANTING ORGANIZATION.—The term ‘scholarship granting organization’ means any organization—

“(A) which—

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

“(ii) is not a private foundation,

“(B) whose exclusive purpose is to provide scholarships for qualified elementary or secondary education expenses of eligible students, and

“(C)(i) which meets the requirements of subsection (d), or

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

“(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING ORGANIZATIONS.—
“(1) IN GENERAL.—An organization meets the requirements of this subsection if—

“(A) such organization provides scholarships to 2 or more students, provided that not all such students attend the same school,

“(B) such organization does not provide scholarships for any expenses other than qualified elementary or secondary education expenses,

“(C) such organization provides a scholarship to eligible students with a priority for—

“(i) students awarded a scholarship the previous school year, and

“(ii) after application of clause (i), any such students who have a sibling who was awarded a scholarship from such organization,

“(D) such organization does not earmark or set aside contributions for scholarships on behalf of any particular student,

“(E) such organization takes appropriate steps to verify the annual household income and family size of eligible students to whom it awards scholarships, and limits them to a member of a household for which the income does
not exceed the amount established under subsection (e)(1)(A),

“(F) such organization—

“(i) obtains from an independent certified public accountant annual financial and compliance audits, and

“(ii) certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that the audit described in clause (i) has been completed, and

“(G) no officer or board member of such organization has been convicted of a felony.

“(2) INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.—For purposes of paragraph (1)(F), the term ‘independent certified public accountant’ means, with respect to an organization, a certified public accountant who is not a person described in section 465(b)(3)(A) with respect to such organization or any employee of such organization.

“(3) PROHIBITION ON SELF-DEALING.—

“(A) IN GENERAL.—A scholarship granting organization may not award a scholarship to any disqualified person.
“(B) DISQUALIFIED PERSON.—For purposes of this paragraph, a disqualified person shall be determined pursuant to rules similar to the rules of section 4946.

“(e) DENIAL OF DOUBLE BENEFIT.—Any qualified contribution for which a credit is allowed under this section shall not be taken into account as a charitable contribution for purposes of section 170.

“(f) CARRYFORWARD OF UNUSED CREDIT.—

“(1) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section, section 23, and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

“(2) LIMITATION.—No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

“(g) APPLICATION OF VOLUME CAP.—A qualified contribution shall be taken into account under this section
only if such contribution is not in excess of the volume

cap established under section 3 of the Educational Choice
for Children Act.”.

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

“Sec. 25E. Qualified elementary and secondary education scholarships.”.

(b) CREDIT FOR CORPORATIONS.—

(1) IN GENERAL.—Subpart D of part IV of
subchapter A of chapter 1 of such Code is amended
by adding after section 45T the following:

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

“(a) GENERAL RULE.—For purposes of section 38,
in the case of a corporation, the education scholarship
credit determined under this section for the taxable year
is the aggregate amount of qualified contributions for the
taxable year.

“(b) AMOUNT OF CREDIT.—The credit allowed under
subsection (a) for any taxable year shall not exceed 5 per-
cent of the taxable income (as defined in section
170(b)(2)(D)) of the corporation for such taxable year.
“(c) QUALIFIED CONTRIBUTIONS.—For purposes of this section, the term ‘qualified contribution’ has the meaning given such term under section 25E.

“(d) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under any provision of this chapter for any expense for which a credit is allowed under this section.

“(e) APPLICATION OF VOLUME CAP.—A qualified contribution shall be taken into account under this section only if such contribution is not in excess of the volume cap established under section 3 of the Educational Choice for Children Act.”.

(2) CONFORMING AMENDMENTS.—Section 38(b) of such Code is amended by striking “plus” at the end of paragraph (32), by striking the period and inserting “, plus” at the end of paragraph (33), and by adding at the end the following new paragraph:

“(34) the education scholarship credit determined under section 45U(a).”.

(3) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code, as amended by this Act, is amended by adding at the end the following new item:

“Sec. 45U. Contributions to scholarship granting organizations.”.
(c) **Failure of Scholarship Granting Organizations to Make Distributions.**—

(1) **In General.**—Chapter 42 of such Code is amended by adding at the end the following new subchapter:

"Subchapter I—Scholarship Granting Organizations"

"Sec. 4969. Failure to distribute receipts.

**SEC. 4969. FAILURE TO DISTRIBUTE RECEIPTS.**

“(a) **In General.**—In the case of any scholarship granting organization (as defined in section 25E) which has been determined by the Secretary to have failed to satisfy the requirement under subsection (b) for any taxable year, any contribution made to such organization during the first taxable year beginning after the date of such determination shall not be treated as a qualified contribution (as defined in section 25E(c)(2)) for purposes of sections 25E and 45U.

“(b) **Requirement.**—The requirement described in this subsection is that the amount of receipts of the scholarship granting organization for the taxable year which are distributed before the distribution deadline with respect to such receipts shall not be less than the required distribution amount with respect to such taxable year.

“(c) **Definitions.**—For purposes of this section—
“(1) REQUIRED DISTRIBUTION AMOUNT.—

“(A) IN GENERAL.—The required distribution amount with respect to a taxable year is the amount equal to 100 percent of the total receipts of the scholarship granting organization for such taxable year—

“(i) reduced by the sum of such receipts that are retained for reasonable administrative expenses for the taxable year or are carried to the succeeding taxable year under subparagraph (C), and

“(ii) increased by the amount of the carryover under subparagraph (C) from the preceding taxable year.

“(B) SAFE HARBOR FOR REASONABLE ADMINISTRATIVE EXPENSES.—For purposes of subparagraph (A)(i), if the percentage of total receipts of a scholarship granting organization for a taxable year which are used for administrative purposes is equal to or less than 10 percent, such expenses shall be deemed to be reasonable for purposes of such subparagraph.

“(C) CARRYOVER.—With respect to the amount of the total receipts of a scholarship granting organization with respect to any tax-
able year, an amount not greater than 15 percent of such amount may, at the election of such organization, be carried to the succeeding taxable year.

“(2) DISTRIBUTIONS.—The term ‘distribution’ includes amounts which are formally committed but not distributed. A formal commitment described in the preceding sentence may include contributions set aside for eligible students for more than one year.

“(3) DISTRIBUTION DEADLINE.—The distribution deadline with respect to receipts for a taxable year is the first day of the third taxable year following the taxable year in which such receipts are received by the scholarship granting organization.”.

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 42 of such Code is amended by adding at the end the following new item:

“SUBCHAPTER I. SCHOLARSHIP GRANTING ORGANIZATIONS”.

SEC. 3. VOLUME CAP.

(a) ALLOCATION.—

(1) IN GENERAL.—For purposes of sections 25E(g) and 45U(e) of the Internal Revenue Code of 1986 (as added by this Act), the volume cap applicable with respect to both such sections shall be $10,000,000,000 for calendar year 2023 and each
subsequent year thereafter, with such amount to be allocated as follows:

(A) $1,000,000,000 shall be allocated to the States, with such amount to be allocated in equal amounts to each State. With respect to the amount which has been allocated to a State for any calendar year—

(i) 50 percent of such amount shall be made available for any individual residing in such State to claim the credit allowed under section 25E of the Internal Revenue Code of 1986 with respect to any qualified contributions (as defined in such section) made by such individual during any taxable year beginning during such calendar year, and

(ii) 50 percent of such amount shall be made available for any corporation created or organized in such State to claim the credit determined under section 45U of such Code with respect to any qualified contributions made by such corporation during any taxable year beginning during such calendar year.
(B) With respect to the amount remaining after the allocation under subparagraph (A)—

(i) 50 percent of such amount shall be made available for any individual to claim the credit allowed under section 25E of the Internal Revenue Code of 1986 with respect to any qualified contributions made by such individual during any taxable year beginning during such calendar year, and

(ii) 50 percent of such amount shall be made available for any corporation to claim the credit determined under section 45U of such Code with respect to any qualified contributions made by such corporation during any taxable year beginning during such calendar year.

(2) CARRYOVER.—The amount of any allotment to a State under paragraph (1)(A) for any calendar year which is not claimed by taxpayers described in such paragraph during such calendar year shall be added to the allotment provided to such State under such paragraph for the subsequent calendar year.

(b) FIRST-COME, FIRST-SERVE.—For purposes of applying the volume cap under this section, such volume cap shall be applied based on a first-come, first-serve basis,
as determined based on the date on which the taxpayer
made the qualified contribution.
(c) REAL-TIME INFORMATION.—For purposes of this
section, the Secretary of the Treasury (or the Secretary’s
delegate) shall develop a system to track the amount of
qualified contributions made during the calendar year for
which a credit may be claimed under section 25E or 45U
of the Internal Revenue Code of 1986, with such informa-
tion to be updated in real time.

SEC. 4. EXEMPTION FROM GROSS INCOME FOR SCHOLAR-
SHIPS FOR QUALIFIED ELEMENTARY OR SEC-
ONDARY EDUCATION EXPENSES OF ELIGIBLE
STUDENTS.

(a) IN GENERAL.—Part III of subchapter B of chap-
ter 1 of the Internal Revenue Code of 1986 is amended
by inserting before section 140 the following new section:

“SEC. 139I. SCHOLARSHIPS FOR QUALIFIED ELEMENTARY
OR SECONDARY EDUCATION EXPENSES OF
ELIGIBLE STUDENTS.

“(a) IN GENERAL.—In the case of an individual,
gross income shall not include any amounts provided to
any dependent of such individual pursuant to a scholar-
ship for qualified elementary or secondary education ex-
penses of an eligible student which is provided by a schol-
arship granting organization.
“(b) DEFINITIONS.—In this section, the terms ‘qualified elementary or secondary education expense’, ‘eligible student’, and ‘scholarship granting organization’ have the same meaning given such terms under section 25E(c).”.

(b) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting before the item relating to section 140 the following new item:

“Sec. 139I. Scholarships for qualified elementary or secondary education expenses of eligible students.”.

SEC. 5. ORGANIZATIONAL AND PARENTAL AUTONOMY.

(a) Prohibition of Control Over Scholarship Organizations.—

(1) IN GENERAL.—

(A) TREATMENT.—A scholarship granting organization shall not, by virtue of participation under any provision of this Act or any amendment made by this Act, be regarded as acting on behalf of any governmental entity.

(B) NO GOVERNMENTAL CONTROL.—Nothing in this Act, or any amendment made by this Act, shall be construed to permit, allow, encourage, or authorize any Federal, State, or local government entity, or officer or employee there-
of, to mandate, direct, or control any aspect of any scholarship granting organization.

(C) MAXIMUM FREEDOM.—To the extent permissible by law, this Act, and any amendment made by this Act, shall be construed to allow scholarship granting organizations maximum freedom to provide for the needs of the participants without governmental control.

(2) PROHIBITION OF CONTROL OVER NON-PUBLIC SCHOOLS.—

(A) NO GOVERNMENTAL CONTROL.—Nothing in this Act, or any amendment made by this Act, shall be construed to permit, allow, encourage, or authorize any Federal, State, or local government entity, or officer or employee thereof, to mandate, direct, or control any aspect of any private or religious elementary or secondary education institution.

(B) NO EXCLUSION OF PRIVATE OR RELIGIOUS SCHOOLS.—No Federal, State, or local government entity, or officer or employee thereof, shall impose or permit the imposition of any conditions or requirements that would exclude or operate to exclude educational expenses at private or religious elementary and secondary
education institutions from being considered qualified elementary or secondary education expenses.

(C) No exclusion of qualified expenses due to institution’s religious character or affiliation.—No Federal, State, or local government entity, or officer or employee thereof, shall exclude, discriminate against, or otherwise disadvantage any elementary or secondary education institution with respect to qualified elementary or secondary education expenses at that institution based in whole or in part on the institution’s religious character or affiliation, including religiously based or mission-based policies or practices.

(3) Parental rights to use scholarships.—No Federal, State, or local government entity, or officer or employee thereof, shall disfavor or discourage the use of scholarships granted by participating scholarship granting organizations for qualified elementary or secondary education expenses at private or nonprofit elementary and secondary education institutions, including faith-based schools.
(4) PARENTAL RIGHT TO INTERVENE.—In any action filed in any State or Federal court which challenges the constitutionality (under the constitution of such State or the Constitution of the United States) of any provision of this Act (or any amendment made by this Act), any parent of an eligible student who has received a scholarship from a scholarship granting organization shall have the right to intervene in support of the constitutionality of such provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may require interveners taking similar positions to file joint papers or to be represented by a single attorney at oral argument, provided that the court does not require such interveners to join any brief filed on behalf of any State which is a defendant in such action.

(b) DEFINITIONS.—For purposes of this section, the terms “eligible student”, “scholarship granting organization”, and “qualified elementary or secondary education expense” shall have the same meanings given such terms under section 25E(e) of the Internal Revenue Code of 1986 (as added by section 2(a) of this Act).
SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 2022.