

1 EXECUTIVE COMMITTEE MEETING ON THE CHAIRMAN'S MARK -
2 AFFORDABLE EDUCATION ACT OF 2001
3 TUESDAY, MARCH 13, 2001
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.

7 The meeting was convened, pursuant to notice, at
8 10:11 a.m., in room 215, Dirksen Senate Office Building,
9 Hon. Charles Grassley (chairman of the committee)
10 presiding.

11 Present: Senators Hatch, Murkowski, Nickles, Gramm,
12 Lott, Jeffords, Thompson, Snowe, Kyl, Baucus,
13 Rockefeller, Daschle, Breaux, Conrad, Graham, Bingaman,
14 Kerry, Torricelli, and Lincoln.

15 Also present: Calvin Davis, Staff Director and Chief
16 Counsel; and John Angell, Democratic Staff Director.

17 Also present: Mark Weinberger, Assistant Secretary
18 for Tax Policy, Treasury Department; Russell Sullivan,
19 Democratic Chief Tax Counsel; Mark Prater, Republican
20 Chief Tax Counsel, Lindy Paull, Chief of Staff, Joint
21 Committee on Taxation; and Carla Martin, Chief Clerk.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
2 SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. Three weeks ago, this committee began
5 the process of examining tax-related education
6 legislation in the full committee hearing. Two things
7 are very clear to me, based on that hearing. First,
8 higher education is becoming less and less affordable for
9 typical American families. Second, the Senate is
10 interested in increasing our commitment to education at
11 all levels.

12 At our hearing on February 14 this year, a record
13 number of Senators testified before the committee on
14 various proposals to improve education.

15 This Chairman's mark builds on that bipartisan work
16 of this committee in the last two Congresses. Most
17 recently, in the 106th Congress, the committee reported
18 out the Affordable Education Act. That legislation
19 passed the Senate last year, but was, unfortunately,
20 vetoed and did not become law.

21 The mark works to make education more affordable by
22 expanding some of the tools already established in our
23 Tax Code. For example, it raises the amount that can be
24 contributed to an education savings account from \$500 to
25 \$2,000. It makes distribution from prepaid college

1 savings plans and tuition plans tax-free, and permits
2 consortia of private colleges and universities to offer
3 prepaid tuition plans.

4 It makes permanent the tax-free treatment of
5 employer-provided educational assistance. It removes a
6 limitation on the deductibility of student loan interest,
7 adjusts income limits, and improves local options for
8 construction and renovation of public schools.

9 I hope that we will report a package of education tax
10 improvements today. We will then have taken a step--
11 obviously, the next step--towards enactment of
12 legislation to make education more affordable.

13 Now I will turn to Senator Baucus and thank him for
14 his cooperation, and his staff's cooperation, in getting
15 us to this point.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA

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4 Senator Baucus. Thank you very much, Mr. Chairman.

5 First, I note that this, as the first legislative
6 mark, it is probably on the most important subject,
7 generally, for this country, and that is education. I
8 appreciate that we are getting off on such a good note.

9 Second, I appreciate the mark--I might say our mark--
10 that we put together in this era. We all very much
11 appreciate on this side, Mr. Chairman, the cooperation
12 that you have demonstrated and the leadership you have
13 demonstrated in helping to guide us together on a
14 bipartisan basis.

15 Clearly, this legislation will help reduce the cost
16 of higher education, it will help many school districts
17 with construction needs. As I mentioned, it is
18 bipartisan. I look forward to getting this enacted at
19 the appropriate time.

20 I notice that the Senator from Vermont is here today,
21 and he has a lot to say with the timing of this bill. We
22 look forward to working with him as well as we get this
23 bill passed.

24 The Chairman. Thank you very much.

25 Now I would like to turn to the committee's business.

1 I hate to look around and ask if people want to speak--
2 but I should probably be very charitable to my members--
3 as I would like to get my first bill out today.

4 The Senator from Vermont?

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1 OPENING STATEMENT OF HON. JAMES M. JEFFORDS, A U.S.
2 SENATOR FROM VERMONT

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4 Senator Jeffords. Thank you, Mr. Chairman.

5 First, I would like to let it be known that I am very
6 conscious of the problems in our educational system. As
7 you know, we have just marked up the ESEA bill. I am
8 hopeful that that bill will pass and get to the floor. I
9 would hope that we do not get tangled up with tax
10 amendments, certainly at this time, on education.

11 But I would just like to also put everyone on notice
12 that it is difficult for me to see the surpluses we have
13 and not look at our educational problems, and believe
14 that we have some serious problems that we have to take
15 into consideration.

16 First, I spent the weekend going over where we stand
17 in early childhood education relative to the rest of the
18 world. We are the worst in the world with respect to our
19 early childhood education, both as to results, and we are
20 the only country that does not either fully, or almost
21 fully, fund early childhood education.

22 The biggest problem is with our desires to have all
23 of our students to be good in math, and we are about the
24 worst in the world in that area. We are also facing
25 crises with respect to math and science teachers. None

1 are coming in to be available, and we do not have good
2 math and science teachers. We have looming in the near
3 future a nursing shortage, which is going to be
4 incredibly difficult for us to try and handle.

5 All of these are going to take significant, if not
6 substantial, changes in the Tax Code for financing to
7 take care of these. I will not go into any great length
8 today, but just to let it be known, that on the tax bill
9 I am going to fight very hard for very substantial sums
10 of money for education.

11 Thank you, Mr. Chairman.

12 The Chairman. Thank you very much.

13 Now, Senator Conrad.

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1 OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR
2 FROM NORTH DAKOTA

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4 Senator Conrad. Mr. Chairman, first of all, I
5 appreciate very much the hard work that has gone into
6 this.

7 I would like to associate myself with the remarks of
8 Chairman Jeffords with respect to education and the need
9 to give it very prominent consideration in the budget
10 process, and in any legislation that comes before the
11 Senate.

12 Mr. Chairman, I have a concern about this bill just
13 in terms of how we proceed. It strikes me that we have
14 got the cart before the horse in dealing with tax
15 legislation before we have a budget resolution.

16 I have often thought that the best way for the Senate
17 to do business is to have a budget first, then we make
18 determinations on what the priorities are within a
19 budget.

20 Here, we are prepared to pass legislation, albeit in
21 most of its elements very positive, without having the
22 benefit of a budget. Just in terms of our process, I
23 think that is backwards. I hope we will not make a habit
24 of it.

25 The Chairman. Could I respond with two points?

1 Number one, first, remember, I believe the figure is \$14
2 billion that is in this year's fiscal budget that was
3 decided last year, so we do have some leeway from that
4 standpoint.

5 Second, this legislation is being presented to the
6 Senate without the certainty that it would be moved
7 separately. Probably we will have a budget through the
8 Senate before the provisions of this legislation would
9 come up.

10 Senator Conrad. So it would be your intention, Mr.
11 Chairman, that this would be part of an omnibus bill?

12 The Chairman. I would say at this point it is
13 possible it could be part of an education bill or part of
14 an omnibus tax bill, either one, at this point.

15 Senator Conrad. All right.

16 The Chairman. I would now like to turn to today's
17 committee business. I would call up the mark that
18 Senator Baucus and I have put together, an original bill
19 entitled "The Affordable Education Act of 2001."

20 On a preliminary note, this is in the spirit of
21 bipartisanship. For that reason, I omitted the K-12
22 withdrawal provisions from the education IRA, in
23 deference to Senator Baucus. So, I am proud to say that
24 we are starting this Finance Committee's work on a
25 bipartisan basis.

1 I would like to now turn to Mark Prater of the
2 Finance Committee staff to provide a very brief walk-
3 through of the Chairman's mark.

4 Mr. Prater. Thank you, Mr. Chairman, members of the
5 committee.

6 The Chairman's mark is patterned after the
7 committee's previous action in this area. It has several
8 provisions that, like I said, have been previously
9 approved by the committee. I will briefly go through
10 those and note where they are different.

11 The first one would raise the education IRA amount to
12 \$2,000. As you noted, Mr. Chairman, this does not
13 include the K-12 withdrawal feature.

14 Number two, is to provide tax-free treatment to
15 qualified savings and prepaid college tuition plans, and
16 to also make sure that they coordinate with the HOPE and
17 Lifetime Learning Credit.

18 Number three, is to provide a permanent exclusion for
19 undergraduate and graduate employer-provided education
20 benefits, make that tax-free.

21 Number four, student loan interest. Again, patterned
22 after something previously approved by the committee,
23 with slightly higher income limits. It would eliminate
24 the 60-month limitation and raise those income limits.

25 Number five would eliminate the tax on awards under a

1 National Health Core Scholarship Program, and Edward
2 Abear Armed Forces Program.

3 Finally, two school construction measures. One,
4 raising the small issue of arbitrage rebate exemption
5 from \$10 million to \$15 million. Finally, the provision
6 that provides for private activity bond treatment for
7 qualified educational facilities.

8 As I said, these measures have previously been
9 approved by the committee, so we start with that basis.

10 The Chairman. Thank you.

11 I would like to also note that at the table is Lindy
12 Paull, Chief of Staff of the Joint Tax Committee, Mark
13 Weinberger, Assistant Secretary for Tax Policy for the
14 Treasury Department, and we have Russ Sullivan, Chief Tax
15 Counsel, for the Democratic staff of the Finance
16 Committee.

17 Now I would like to have Mr. Sullivan speak of the
18 modifications of the Chairman's mark.

19 Mr. Sullivan. Senators, the modification to the
20 Chairman's mark contains two provisions. One was an
21 amendment submitted by Senator Graham of Florida, another
22 was submitted jointly by Senators Torricelli and Senator
23 Hatch.

24 Senator Graham's amendment deals with the definition
25 of room and board for State tuition plans. Our current

1 law limits the amount that can be taken out of these
2 State tuition plans and applied toward room and board.
3 The definition of room and board is tied to the Higher
4 Education Act definition of cost of attendance.

5 When this committee originally included that, they
6 tied it to the definitions back in 1996. In 1998,
7 Congress updated those definitions and increased the
8 amount of qualified room and board expenses.

9 This modification would conform to the adjusted
10 Higher Education definition, and also allow families to
11 choose either that amount, or if their student actually
12 lives in a dormitory on campus or university-owned
13 housing, to use the actual amount of the room and board
14 expenses rather than an average amount.

15 Senator Nickles. Mr. Chairman, may I ask a
16 question?

17 The Chairman. Yes.

18 Senator Nickles. I am just trying to figure this
19 out. So the provision is, where individuals get either a
20 scholarship or--is this under the employer-provided?

21 Mr. Sullivan. No. This is for State tuition plans,
22 where families can set up either a savings account or a
23 prepaid college tuition account. Under current law, the
24 earnings on that are tax-deferred until the student goes
25 to college. Under those plans, either college saving or

1 prepaid tuition, qualified expenses include both tuition
2 or room and board costs.

3 Senator Nickles. So in that scenario, if a parent
4 is putting in money for this prepaid State assistance,
5 they have already paid taxes on the money?

6 Mr. Sullivan. That is correct.

7 Senator Nickles. So they put it in, it accumulates
8 tax-free, and then they are able to pay that out and
9 there will be no tax on the distribution, the
10 distribution being tuition and room and board.

11 Mr. Sullivan. That is correct.

12 Senator Nickles. These State tuition plans--and
13 this is for you, Mr. Prater, or whoever--are they
14 available in every State?

15 Mr. Sullivan. Almost.

16 Mr. Prater. Almost. Forty-eight, I believe, of the
17 50 States, Senator Nickles, have passed legislation for
18 the plans. We anticipate the remaining two States to do
19 the same.

20 Senator Nickles. But most every parent that is
21 paying college tuition has to use after-tax dollars to
22 pay for their child's education. Certainly, almost every
23 parent has to use after-tax dollars to pay for their
24 child's room and board.

25 Mr. Sullivan. Correct.

1 Senator Nickles. But if one went through the
2 prepaid State plans, what you are saying is, with the new
3 definition's expanded eligibilities, that you could have
4 basically after-tax dollars paid initially, accumulate to
5 something, and basically have tax assistance for
6 providing not only tuition, but room and board.

7 Mr. Sullivan. Right. The distributions, if they
8 were used for qualified room and board expenses, those
9 would be tax-free distributions. That is current law.
10 The modification just updates the definition to conform
11 with changes in what constitutes qualified room and board
12 on higher education.

13 Senator Nickles. Are there dollar limitations on
14 these plans for distributions?

15 Mr. Sullivan. Yes. The States are responsible for
16 setting contribution limits in such a way that the
17 distributions would only qualify or be used for qualified
18 expenditures.

19 Senator Nickles. But no dollar limit.

20 Mr. Sullivan. Well, actually, in the definition of
21 room and board, for example, under current law, there is
22 a dollar limit. If you are living with your parents it
23 is \$1,500, if you are living in off-campus housing it is
24 \$2,500 per year.

25 Those are generally, at least off campus, deemed to

1 be lower than market value, generally, across the U.S.
2 So if we conform to the new definition under the Higher
3 Education Act, that would be an amount set each year by
4 the Department of Education.

5 The Chairman. Proceed, Mr. Sullivan.

6 Mr. Sullivan. The second amendment deals with
7 income limits applicable to contributions to education
8 savings accounts, eliminating a marriage penalty there by
9 increasing the amount that can be contributed, for
10 married couples, to an income limit of twice that for
11 single individuals.

12 The Chairman. Is that it?

13 Mr. Sullivan. That is all.

14 The Chairman. All right.

15 Are there any further questions of either chief
16 counsel?

17 [No response]

18 The Chairman. All right. Then I would move to
19 modify the Chairman's mark, without objection. I always
20 wait a minute, so yell out.

21 [No response]

22 The Chairman. Without objection, so ordered.

23 Now, we did have 19 amendments filed in advance. I
24 would like to thank members who were willing to withhold
25 their amendments. Withholding on these very meritorious

1 issues has helped Senator Baucus and me to expedite this
2 process, which I said earlier is primarily for the
3 purpose of preserving the committee's jurisdiction. I
4 will call that to Senator Conrad's attention for a third
5 reason that I did not give him at the time.

6 I want to thank, particularly, a bipartisan group of
7 Senators who expressed interest in assisting
8 schoolteachers with tax deductibility of expenses. Here,
9 I would refer to at least Senators Hatch, Jeffords, Kyl,
10 and Torricelli. I think you have a very important set of
11 proposals. I would pledge, as Chairman of the committee,
12 to work with you on those items.

13 I also want to thank Senator Snowe, in particular,
14 for withholding on her student loan interest credit
15 amendment. It is an important proposal, and I would also
16 give the same pledge to her.

17 In addition, we have Senators Snowe and Torricelli
18 who are proposing tuition deduction proposals and
19 proposals related to income limits on HOPE and Lifetime
20 Learning Credits. Those, likewise, are worthwhile
21 amendments. It is my understanding that you have agreed
22 to withhold on those.

23 I also heard that Senator Nickles has raised
24 important questions with respect to the scope of Section
25 127, and I believe he has offered to not bring that up at

1 this particular time. I thank you for your cooperation.

2 I think I should turn, now, to Senator Baucus for any
3 comments that he might make at this point.

4 Maybe before you start, I always want to give
5 attention to the time constraints that the Majority and
6 Democrat Leaders might have. So would you like to say
7 something at this point?

8 Senator Daschle. Mr. Chairman, I will defer to
9 Senator Baucus.

10 Senator Baucus. No. Go ahead.

11 Senator Daschle. Let me just say, I was not here at
12 the beginning, and I apologize. I know that Senator
13 Conrad raised the concern about the budget, and I am very
14 pleased that he did.

15 I think we do need to be concerned about all of the
16 budgetary implications as we take up bills of any import,
17 and certainly this one is critically important to
18 education, as well as to the matters relating to tax this
19 year.

20 But, as I understand it, the Chairman responded that
21 this is not likely to come up until after the budget
22 resolution has been addressed. So, I appreciate his
23 concern as well. As I say, I will yield to my Ranking
24 Member.

25 The Chairman. I did express that, Senator Daschle.

1 But I hope that you will put on an equal plane the fact
2 that we should not have any tax legislation before the
3 U.S. Senate that has not been considered by this
4 committee. It is kind of a catch-22 situation I am in.

5 Senator Baucus, very early in our relationship, has
6 expressed that same desire, to make sure that we preserve
7 the jurisdiction of this committee. So that is why I
8 felt, and he felt, that it was important that we move
9 this legislation.

10 I do think that what I said to Senator Conrad will,
11 as a practical matter, turn out. But I think that I
12 should have some leeway just in case other legislation
13 comes up, where individual members might want to attach
14 some tax legislation to that, that this committee has
15 already spoken and has that legislation ready to go so
16 that an individual member of the Senate does not take
17 priority over the role of this committee and the 20
18 members of this committee.

19 Senator Baucus?

20 Senator Baucus. Mr. Chairman, Mr. Leader, I think
21 that that adequately summarizes the situation that we are
22 in, namely, clearly, we want to put the horse before the
23 cart, that is, have a budget, first. I do not think
24 there is anybody who disagrees with that.

25 The problem is, we do not have the luxury of knowing

1 absolutely that that is going to happen. It very well
2 may be that there is an education bill on the floor, and
3 this committee wants to assure that it has jurisdiction
4 over all of the provisions it has jurisdiction over,
5 namely the tax provisions.

6 It is my hope that an education bill will not come up
7 on the floor of the Senate before the budget resolution.
8 I think that is the proper order of business. But the
9 Senate being what it is, one cannot predict with absolute
10 certainty, and discretion is the better part of valor.

11 The Chairman felt, and I certainly felt, that given
12 that set of circumstances, it would be better for us to
13 mark up the education provisions of the bill at this
14 time.

15 This committee, and the Congress, will always meet
16 another day. There are opportunities to make
17 modifications and adjustments one way or another. But,
18 anyway, I think the Chairman made the right call, and I
19 support him on it.

20 Before I finish, I would like to also compliment the
21 Senators who have added to this bill with various
22 provisions. Senator Graham is sort of our education
23 financing expert. He has got more ideas on how to come
24 up with new financing mechanisms, not only in education,
25 but other areas, than any other Senator I have known. I

1 compliment him on that.

2 Senator Kerry has got some construction provisions.
3 Senator Torricelli is a strong advocate of education, and
4 I very much appreciate his efforts on this bill as well.
5 I know Senator Jeffords and others in the committee are
6 working as diligently. I just compliment those Senators
7 who brought amendments forward.

8 The Chairman. Senator Nickles asked for the floor.
9 Then it would be my intention to go to Senator Bingaman
10 after that, because it is my understanding you have a
11 point you want to raise.

12 Senator Nickles?

13 Senator Nickles. Mr. Chairman, I am just trying to
14 find out. Is the House, in their education bill, having
15 tax components in their bill?

16 The Chairman. I cannot answer that question. Can
17 any of the staff answer that question? We are not aware
18 of it.

19 Senator Nickles. We could have a little dilemma
20 raising a tax bill on the Senate side. Just a little
21 provision. I am just making sure that my colleagues were
22 aware of that. I did not know if the House was putting
23 their tax component dealing with education in the overall
24 bill or if they were going to put it in the education
25 bill.

1 The Chairman. None of the constitutional
2 requirements prevent this committee from functioning, or
3 the Senate from functioning. It follows a little bit on
4 the point I made to Senator Daschle. That is, we are
5 kind of in a catch-22 position. We have had individual
6 tax amendments brought up on the floor in recent years on
7 other legislation.

8 We have been in a situation where Chairmen of this
9 committee have argued the constitutional point that those
10 should not be considered, and maybe lost. Consequently,
11 then the jurisdiction of this committee is foregone.

12 I think you have to make up your mind. Do you
13 believe in the committee system? Do you want this
14 committee to function or not? If you want it to
15 function, we are going to have to be in, sometimes, the
16 catch-22 situation we are in. But we still will abide by
17 the constitution.

18 Senator Baucus. I think the courts will make sure
19 of that.

20 The Chairman. Senator Bingaman?

21 Senator Bingaman. Thank you very much.

22 The Chairman. Well, Senator Bingaman, since we have
23 got a little informal discussion here on the
24 constitution, would you hold just a minute?

25 Senator Gramm?

1 Senator Gramm. Mr. Chairman, first of all, I am
2 going to be supportive of whatever you decide to do here
3 with regard to these provisions. But it seems to me
4 that, while we cannot reach the conclusion here that
5 solves the problem, there is an obvious solution to the
6 problem.

7 The obvious solution is, let us bring up the
8 education bill without the tax provisions. Then it can
9 be debated, amended, and passed. Then we can include the
10 education provisions in the larger tax bill that we do
11 later after the budget. I think that is the solution.

12 I think, if members of this committee decided to do
13 it that way and we opposed tax amendments on the
14 education bill, then I think that it would happen that
15 way.

16 So, I just simply throw that out as a way of solving
17 the problem, that there are people who want to get on
18 with the debate about education prior to the budget. I
19 think that it is an important issue and we should be
20 dealing with it, but I question whether it is good policy
21 to have different tax provisions and different bills
22 rather than one bill altogether.

23 I can live with it either way. But I just simply
24 want to reiterate, I think the solution to the problem,
25 in terms of the budget and the education bill, is do the

1 education bill without tax provisions and do the
2 education tax provisions on the tax bill. I think that
3 makes eminently good sense.

4 The Chairman. It could very well materialize
5 exactly the way you stated it. The only thing is, I
6 think that it is better to be ready than to be caught
7 with your pants down. [Laughter]. Senator Bingaman?

8 Senator Bingaman. Thank you very much. I agree
9 with that last statement, Mr. Chairman. [Laughter].

10 There was an issue I wanted to raise just for the
11 information of the committee. I had intended to offer an
12 amendment and have been persuaded by yourself and Senator
13 Baucus that this is not the right place to do this.

14 But members will remember that, last year, we had a
15 terrible fire in Los Alamos, New Mexico. We passed
16 legislation to compensate people there in the town. The
17 fire was set by the Park Service. We passed legislation
18 to compensate people for lost homes and for lost profits
19 from their businesses and all as a result of the fire.

20 There now have arisen several questions about the tax
21 treatment of the payments that they have received. There
22 is concern that many of those are intended to be taxed
23 and people are going to have to pay income tax for the
24 funds they received as reimbursement for the losses,
25 which did not seem fair to many of us, and does not seem

1 fair to many people in Los Alamos.

2 I have an amendment to deal with that. But rather
3 than offer it today, I am going to try to work with Mr.
4 Weinberger at the Treasury Department and see if we can
5 get this thing resolved so we can give people some
6 reliable instructions and direction as to what they can
7 assume the law is as they file their tax returns on the
8 15th of April.

9 So I know I have talked to Mr. Weinberger very
10 briefly about this. I hope that the Treasury Department
11 can help us solve this and that we will not have to go
12 forward with legislation, but I wanted to bring it up in
13 case we do have to go forward with legislation on it, Mr.
14 Chairman.

15 The Chairman. Would Mr. Weinberger feel comfortable
16 in commenting on it, without violating the checks and
17 balances of government, being you are from the executive
18 branch?

19 Mr. Weinberger. Certainly, Mr. Chairman. Senator
20 Bingaman and I have discussed this and I appreciate your
21 bringing it to Treasury's attention. I have not had a
22 chance to work with IRS counsel yet to find out the
23 specific details of the payment and current law
24 treatment, but Treasury commits to you to do that in
25 short order so that your taxpayers in New Mexico will

1 have the appropriate guidance in time for the filing
2 season.

3 Senator Bingaman. Mr. Chairman, based on that, I am
4 not offering the amendment today. But again, I do want
5 the committee to be aware of the problem in case we have
6 to pursue it later on.

7 Thank you very much.

8 The Chairman. Yes. I would encourage the
9 administration, the Treasury Department, to work with
10 Senator Bingaman. Every member has got some little tax
11 issue that they want to deal with in legislation.

12 A lot of it is because they are overruling some
13 bureaucratic rule that is probably contrary to
14 congressional intent anyway, and try to work these things
15 out so we do not spend all of our time on this committee
16 trying to correct things a bureaucracy should not be
17 doing in the first place.

18 Anyway, I thank Senator Bingaman, and I am sure that
19 you will try to help work with him.

20 I was going to call on Senator Kerry next, but he is
21 not here. So I think that brings up Senator Torricelli's
22 amendment. If you would feel comfortable moving forward
23 at this point, Senator, it would help us very much.

24 Senator Torricelli. Thank you, Mr. Chairman, very
25 much.

1 Mr. Chairman, I offer Education Savings Accounts, on
2 behalf of myself and Senator Lott. First, I am very
3 proud to be able to be offering this with the
4 distinguished Majority Leader.

5 Second, to my colleagues, since we have found a
6 common New Jersey/Mississippi interest in this
7 legislation, it should be relatively easy for every other
8 State in the Union.

9 As many of you know, Senator Coverdell, during his
10 distinguished career in the Senate, worked for this
11 legislation for many years. Indeed, he worked
12 tirelessly.

13 The first component of my amendment, Mr. Chairman, is
14 that these Education Savings Accounts in the legislation
15 be identified as Coverdell accounts in honor of the
16 Senator from Georgia who fought so long for this effort.

17 Second, Mr. Chairman, there is probably not a member
18 of the committee who is not familiar with the concept,
19 since every member of the committee has voted for or
20 against this provision several times. I am very proud
21 that on several occasions an overwhelming majority of the
22 Senate has supported Education Savings Accounts.

23 Let me briefly remind you of the merits of this
24 cause. It might, indeed, be controversial whether public
25 money should go to private schools. But I do not

1 understand how it can be controversial whether private
2 money should go to private schools. I remind you that
3 that is the essence of this case. The Senate can decide
4 on another day on vouchers or other provisions which,
5 controversially, would take public money and divert them
6 for these purposes.

7 But what we are discussing in this amendment is
8 simply whether a family--a mother, a father, an aunt, a
9 grandparent--and, indeed, affiliated organizations--a
10 church, a synagogue, an employer--can take their own
11 money and put them in a savings account for a child.

12 Interestingly, overwhelmingly--indeed, 75 percent of
13 this money--probably would go to public school students
14 because we allow this money to be used for ancillary
15 activities in the public schools. But the remainder
16 would, indeed, help families with private school
17 students.

18 In my State, interestingly, 90 percent of these
19 private school students are in places like Patterson,
20 Camden, and Newark, where parochial and private schools
21 are helping with the burden of educating the poor of the
22 poor. This provides an alternative for those families.

23 But it also is an alternative, Mr. Chairman, for
24 every family. To deal with the reality of the situation,
25 we live in a time when public education is no longer

1 free. School districts in my State; computer classes,
2 football teams, after-school activities cost money.
3 Parents have to buy materials, pay for transportation, or
4 pay fees. Those things could be paid out of these
5 accounts as well.

6 So, Mr. Chairman, in this legislation we attempt to
7 do what the Senate has tried to do several times in the
8 last few years. That is, unlock what we believe to be up
9 to \$10 billion in private money to the fight to educate
10 American children, public and private, K through 12.

11 I think we can be proud of doing this. We can agree
12 on another day to fight on the question of the use of
13 public money for private schools, but in this instance we
14 are simply inviting American families back into the fight
15 to educate their own children.

16 We call upon the community at large, private
17 organizations, on a tax-free basis, and parents with
18 their own money to help do whatever they can do to
19 contribute and to complement what the public schools are
20 attempting to do in educating these children.

21 So, these A+ savings accounts would now be added to
22 what President Clinton did with establishing education
23 accounts for colleges. We would do this on a K through
24 12 basis. We would do so at the \$2,000 level, increasing
25 all accounts which currently are at \$500 to \$2,000, and

1 now expanding this on a secondary school basis as well.

2 In any case, Mr. Chairman, on behalf of myself and
3 Senator Lott, I am very proud to offer the amendment.

4 Senator Lott. Mr. Chairman?

5 The Chairman. Senator Lott.

6 Senator Lott. Mr. Chairman, I do not know what
7 order you may have been going in, but I did just want to
8 join in supporting what Senator Torricelli is doing here.
9 I appreciate my name being added as a co-sponsor. He has
10 been consistent. He has been working on this subject for
11 at least two years previously. Of course, our good
12 friend and former Senator, deceased Senator Paul
13 Coverdell, really devoted a lot of his time and energy to
14 this.

15 It is really very simple. While we want to have
16 education savings accounts for higher education, and I
17 support that, but in the case of higher education we do
18 have loans, grants, work study programs, and lots of
19 opportunities for financial aid. But, having said that,
20 I still think that and the prepaid tuition ideas are
21 great.

22 But to make it eligible for elementary and secondary
23 also, to me, makes just such good fundamental sense for
24 parents to be able to save a little of their money to do
25 a little something more for their children, whether it is

1 to buy a computer or get tutoring.

2 In so many instances now we find that children, by
3 the time they reach the eighth grade, if they do not have
4 the basics, if they have not had some of the innovative
5 things that might be available to the better schools and
6 more advantaged students, they are probably lost. We are
7 doing a lot to try to address that. So, I support this
8 effort and appreciate Senator Torricelli's leadership. I
9 hope it will pass.

10 The Chairman. Senator Daschle?

11 Senator Daschle. I appreciate very much the
12 leadership Senator Torricelli has shown in education in
13 so many ways. We have had this debate, and I think
14 everybody understands the issue.

15 Just to be reminded, the Joint Tax Committee said the
16 average family with children in public schools would
17 receive about \$5 a year if this amendment passes. So
18 this is not a benefit of any magnitude for those
19 families.

20 Five dollars a year does not buy a whole lot. But
21 what it does do, is take money away from public education
22 in the overall context of budget. This is a tax
23 expenditure. It may not be a voucher, but it is cousin
24 of a voucher.

25 It again addresses the issue: how can we best help

1 public education? How can we best find ways with which
2 to assist in ensuring that schools are built, that
3 teachers are hired, that after-school programs are
4 provided, that we finance home computers and other kinds
5 of opportunities for students across the board?

6 This does not do it. We have had this debate. there
7 is a big difference between ensuring that those who go to
8 higher education have the help we can provide and those
9 in public education are given the resources in the budget
10 they need to provide the best possible education we can.
11 This does not do it.

12 I am hopeful that people will see it as just that, a
13 well-intended initiative, but certainly not one that
14 addresses the problems, nor is cognizant or sensitive to
15 the real problem we have with regard to vouchers and the
16 approach we are taking in public education today.

17 The Chairman. Are we ready to vote?

18 Senator Baucus. Mr. Chairman?

19 The Chairman. Senator Baucus?

20 Senator Baucus. Mr. Chairman, I think it would be
21 wise to listen to the words of Senator Daschle.
22 Essentially, this amendment begins a slippery slope of
23 going down giving more support to private education at
24 the expense of public education. It is further erosion
25 of support from public to private.

1 Now, private education plays a very clear role in
2 this country. But to direct public money to parochial
3 schools is certainly unconstitutional. This is indirect
4 public money, most of which goes to parochial schools.

5 It is also important to recognize that our country is
6 not homogeneous. There are many States--mine is one--
7 which have very few private schools. There are lots of
8 parts of the country that do not have private schools.
9 The bulk of this money will go, frankly, to 10 percent of
10 the families that attend private schools. Only 50
11 percent of the benefit will go to 90 percent of the
12 families who attend public schools.

13 I just think it would be better for this committee,
14 as we focus on education, to try to find ways to focus
15 even more on public education. I know that is a huge
16 problem. Senator Jeffords from Vermont is working
17 assiduously on it.

18 It is interesting, without taking too much time, Mr.
19 Chairman. Some of us listened to Warren Buffett the
20 other day talk about this country and the value he sees
21 in this country. Basically, what it comes down to, it is
22 meritocracy. He would like to see every kid have an even
23 start at the starting line in life. Every kid.

24 Now, this amendment enables some kids to have a head
25 start at the expense of some other kids. We all know who

1 the other kids are. If every parent, frankly, had his or
2 her child in public schools, we would be doggone sure our
3 public schools would be a lot better than they now are.

4 But we are allowing people to take care of their own
5 kids, which is great and they should do it, but at too
6 much of the expense of the whole, that is, of other kids.
7 I do not agree with the Senator's amendment.

8 I understand what he is trying to do. But I would
9 just like to see this country spend more time on public
10 education, because that will allow every kid in America
11 to have an equal start at the starting line. This
12 amendment is going, frankly, in the other direction.

13 Senator Torricelli. Mr. Chairman, can I have a
14 moment?

15 Senator Gramm. Mr. Chairman?

16 Senator Torricelli. I am sorry.

17 The Chairman. I think I will try to go back and
18 forth as much as I can. Senator Gramm, then Senator
19 Torricelli.

20 Senator Gramm. Mr. Chairman, I will try to be
21 brief. I do not know how you justify saying that
22 families can build up money to send their children to
23 college, but they cannot build up money to prepare them
24 to go to college.

25 I do not know how you can say that this money goes to

1 parochial schools and you are somehow threatening the
2 separation of church and State. Yet, the money we
3 provide for people to go to college goes to parochial
4 colleges and private colleges. Guaranteed student loans
5 are taken with the student.

6 We have the best higher education system in the
7 world. We have among the poorest primary and secondary
8 education systems in the world. One of the main reasons,
9 is the lack of choice and competition. I strongly
10 disagree with our colleagues who say that this somehow
11 undermines public education.

12 I think exactly the opposite is true. I think it
13 promotes competition. It allows people to supplement
14 education with tutoring and it gives people greater
15 choices.

16 It gives people do not have the income to exercise
17 the choices, under the current system, the ability to do
18 it. Rich people are already sending their children to
19 private schools if they want to do it. This lets more
20 people have more choices. This is a freedom debate, it
21 seems to me.

22 The Chairman. Senator Torricelli?

23 Senator Torricelli. Thank you, Mr. Chairman. Mr.
24 Chairman, it is, indeed, true that these Education
25 Savings Accounts are not the answer for every problem in

1 American education for everybody. They are not pretended
2 to be. But they do answer a problem. One, is the
3 problem that parents today are asked to help in public
4 education.

5 In our surveys of the use of these tax-free funds,
6 the largest single use would be public school parents
7 hiring public school teachers to tutor in the afternoons.
8 A middle class family cannot afford to pay for a tutor
9 for science or mathematics instruction in the afternoon.
10 This money would be usable for it.

11 Second, Senator Daschle is undoubtedly right. The
12 actual tax savings of the average family would be very
13 small from their own money. But that is not the concept.

14 Nothing makes me feel better about the future of our
15 cities than, on a Sunday morning, going to an African-
16 American church and have the minister get up there and
17 say, Mrs. Jones has an account established for her son.
18 I want each of you to make a contribution to it.

19 The church is making a contribution, and such-and-
20 such company made a contribution. The savings for that
21 parent may be small, but the potential of the account is
22 enormous. It gets the community involved in helping the
23 child, and that is what we want to do, public or private.

24 Finally, I want to remind everyone that, while
25 undoubtedly, as my colleagues have said, the future of

1 American education will be decided on whether or not we
2 invest in our public schools, but today in our big urban
3 centers our public schools cannot meet that burden. It
4 cannot be done.

5 Seventy-five percent of the students in parochial
6 schools today in our larger cities are minorities, and
7 Protestant. The Catholic schools are carrying this
8 burden because the public schools cannot do it. The
9 average tuition in my State in a parochial school in
10 Newark is \$1,800.

11 Give a family the chance to save \$2,000 from their
12 employer, their union, their neighbors, their
13 grandparents. Even if it is \$1,000 they can save, if it
14 is \$2,000, it can mean the difference in them having an
15 option. This is not an answer to everything, but it is a
16 classic example of making the perfect the enemy of the
17 good.

18 This does help the public school student and the
19 private school student. The bottom line is, it is \$10
20 billion in American education we do not have right now,
21 and it does not cost the taxpayer very much. It helps,
22 at least on the margins.

23 The Chairman. It seems to me Senator Torricelli
24 just said it takes a village to raise a child.

25 Shall we call the roll? Would you call the roll,

1 please?

2 The Clerk. Mr. Hatch?

3 The Chairman. Aye, by proxy.

4 The Clerk. Mr. Murkowski?

5 The Chairman. Aye, by proxy.

6 The Clerk. Mr. Nickles?

7 Senator Nickles. Aye.

8 The Clerk. Mr. Gramm of Texas?

9 Senator Gramm. Aye.

10 The Clerk. Mr. Lott?

11 Senator Lott. Aye.

12 The Clerk. Mr. Jeffords?

13 Senator Jeffords. No.

14 The Clerk. Mr. Thompson?

15 The Chairman. Aye, by proxy.

16 The Clerk. Ms. Snowe?

17 Senator Snowe. Aye.

18 The Clerk. Mr. Kyl?

19 Senator Kyl. Aye.

20 The Clerk. Mr. Baucus?

21 Senator Baucus. No.

22 The Clerk. Mr. Rockefeller?

23 Senator Rockefeller. No.

24 The Clerk. Mr. Daschle?

25 Senator Daschle. No.

1 The Clerk. Mr. Breaux?
2 Senator Baucus. Aye, by proxy.
3 The Clerk. Mr. Conrad?
4 Senator Conrad. No.
5 The Clerk. Mr. Graham of Florida?
6 Senator Graham. Aye.
7 The Clerk. Mr. Bingaman?
8 Senator Bingaman. No.
9 The Clerk. Mr. Kerry?
10 Senator Kerry. No.
11 The Clerk. Mr. Torricelli?
12 Senator Torricelli. Aye.
13 The Clerk. Mrs. Lincoln?
14 Senator Lincoln. No.
15 The Clerk. Mr. Chairman?
16 The Chairman. Aye.
17 The Clerk. Mr. Chairman, the tally is 12 ayes, 8
18 nays.
19 The Chairman. Twelve aye. The Torricelli amendment
20 is carried.
21 I call on Senator Kerry.
22 Senator Kerry. Mr. Chairman, thank you very much.
23 This is an amendment to deal with the problem of
24 school construction. This committee has visited this,
25 the Senate has visited this for some period of time.

1 Three-quarters of the schools in this country are
2 currently in need of repairs, renovation, or
3 modernization. More than one-third of our schools rely
4 on portable classrooms such as trailers. A lot of them
5 lack either heat or air conditioning in places where they
6 desperately need it.

7 Twenty percent of the public schools are currently
8 reporting unsafe conditions, such as failing fire alarms,
9 electric problems, below code, literally unable to meet
10 code.

11 The number of our schools are getting older even as
12 the number of students is growing, up 9 percent in the
13 last 10 years. The Department of Education estimates
14 that 2,400 new schools will be needed in the next three
15 years.

16 States are currently, obviously, investing in school
17 construction. But they also are desperately in need of
18 our help. I think most people who have been viewing this
19 have seen that, even as the annual expenditure for
20 elementary and secondary education schools has gone up,
21 the capacity is still outstripping the supply of local
22 and State monies.

23 Last Thursday, the American Society of Civil
24 Engineers released their 2001 report card on America's
25 infrastructure, and they rate everything, roads, bridges,

1 transit, aviation, drinking water, waste water, et
2 cetera. Of all of the categories included in the report,
3 schools received the lowest mark of all.

4 In this bill, we have obviously trod the territory of
5 some of the arguments, but it had 230 co-sponsors in the
6 House last year. Interestingly enough, nine major
7 superintendents of some of the larger school districts in
8 the county, including Superintendent Rod Page, supported
9 it. I might add that the superintendent of the Oklahoma
10 City public schools praised the bill for addressing what
11 they feel is a huge need they have in Oklahoma.

12 What we do, is provide just a little shy of \$25
13 billion in bonds to modernize schools, with a tax credit
14 at the federal level when the bond matures. It costs us
15 less than \$2 billion over five years, but provides an
16 extraordinary amount of leverage for school construction.
17 I hope my colleagues will embrace it.

18 The Chairman. I would like to suggest that this
19 amendment, albeit it offered in good faith and belief by
20 the Senator from Massachusetts, I hope it will be
21 defeated because Senator Graham and I have amendments in
22 this bill already that will allow over \$1.2 billion in
23 additional incentives for school construction bonds.
24 That is over and above the billions of dollars for school
25 construction that the Tax Code presently allows.

1 I think the amendment has the end result of pitting
2 children against children rather than helping all. It
3 treats some better than others. This amendment creates a
4 tax credit bond that is disproportionately directed, 40
5 percent under the formula, to big cities and to big
6 school districts.

7 There is no reason that large school districts should
8 be first in line for taxpayers' money. Let me assure you
9 that the big New York City school districts, with those
10 billions of dollars in tax revenues and property values,
11 has a much easier and efficient ability to issue school
12 construction bonds that a small rural district,
13 especially when we have these falling farm prices that we
14 have.

15 I would like to have my friends who are both
16 Democrats and Republicans from rural areas to think of it
17 this way. Under this bill, and a formula that is biased
18 towards big cities, several States do not get a single
19 penny.

20 For example, South Dakota does not get a dime under
21 this formula. Other States left out are North Dakota,
22 Maine, Arkansas, Vermont, Montana, Utah, and of course my
23 State of Iowa. These estimates come from an analysis of
24 the formula by the Congressional Research Service.

25 On the other hand, I can see why the Senator from

1 Massachusetts would back this amendment. The City of
2 Boston alone would get \$35 million. Boston, alone, gets
3 more than 30 States, under the formula amount.

4 Now, after all the big city school districts get
5 their money, the rest of the country gets to divide up
6 the remaining 60 percent. The big city school States get
7 a share of that pot as well. These States that already
8 got money the first go-around would go back in line and
9 get their hands filled in the second formula as well.

10 Now, you will hear talk from some about there being a
11 minimum allocation for some States, but that does not go
12 very far. The amendment was only filed yesterday, so I
13 have only had a chance to look at my State. Under this
14 amendment, my State is a big loser as well. Iowa, under
15 a straight formula, would receive only 1.1 percent of the
16 funding. Yet, under the amendments formula, Iowa would
17 be lucky to get around .6 percent for the formula, just
18 under half.

19 Other members might want to withhold voting for this
20 amendment until they see how their States fare. In
21 addition to the rationale for dividing the money making no
22 sense, this amendment will have the Department of
23 Education watching over the shoulders of local school
24 districts every time that they want to hammer two pieces
25 of wood together, because before the States get a penny

1 they have to come hat in hand to the Department of
2 Education here in Washington, DC with their State
3 application.

4 This is a very dangerous policy precedent. We have
5 never before limited the ability of States to issue
6 school construction bonds in such a manner. This is a
7 significant encroachment of something that is a local and
8 State matter.

9 Finally, the amendment has been crafted to have new
10 language regarding Davis-Bacon provisions. So, if all my
11 talk about the formula is not convincing, I would hope
12 that you would have concerns about taking away local
13 school authority and bringing in Davis-Bacon, because
14 that would hopefully help the rest of you to decide that
15 this amendment is not a good amendment.

16 Lastly, I want to say that I would remind my
17 colleagues that, aside from negative implications of
18 forcing higher school construction costs on our school
19 districts back home, this is new ground in the tax policy
20 arena. Tax-exempt bonds have been around for a long time
21 and serve our State and local governments very well.

22 For the first time, we have policy in front of us
23 that conditions a tax benefit in this area on Davis-
24 Bacon. For those of you from States where they do not
25 have Davis-Bacon requirements, you ought to consider this

1 a particular dilemma for your local school districts.

2 In conclusion, I agree with Senator Kerry that we
3 need to do more for school construction. His proposal
4 probably carries out his State objectives, but it does
5 not serve the areas of the rest of the States very well.

6 We ought to have a balanced, fair, and politically
7 neutral policy. For this reason and others previously
8 mentioned, I would urge the committee to reject the Kerry
9 amendment.

10 Senator Rockefeller. Mr. Chairman?

11 The Chairman. Senator Rockefeller?

12 Senator Rockefeller. Mr. Chairman, I have searched
13 West Virginia assiduously for a number of years and have
14 yet to find a city over \$50,000. Fifty thousand people.

15 Senator Baucus. You were right the first time.

16 Senator Rockefeller. Yes. Either way. If Boston
17 gets \$35 million and this is determined on poverty, I
18 just want to point out that West Virginia gets \$124
19 million. So the whole concept that somehow the rural
20 States are getting left behind does not register very
21 clearly with me.

22 The Chairman. Well, I pointed out those that will
23 not get money.

24 Senator Daschle, then Senator Conrad.

25 Senator Daschle. I think that we may be using

1 different charts here. I have been able to acquire a
2 formula distribution chart for all of the States.
3 According to the one I have been given, South Dakota
4 would get \$56 million, Iowa would get \$196 million. So,
5 clearly, South Dakota would benefit from this plan.

6 I was just in a school this weekend in Canestoda,
7 South Dakota. They had three bond issues, all of which
8 failed for one reason: they could not pay the interest.
9 They did not think they could pay the interest.

10 The principal, the superintendent, said the single
11 most important thing we could do for that school
12 district, and I have been told this across the board in
13 South Dakota, is to help schools address the
14 infrastructure crisis that they face. Three out of every
15 four schools in South Dakota and across the country are
16 in a state of disrepair today.

17 The American Society of Architectural Engineers gave
18 schools, as the only category of all the categories of
19 infrastructure, a D minus because of the state of
20 disrepair they are in.

21 The average school today is 42 years old. It just
22 seems to me this is a very limited way, but an
23 extraordinarily effective way, if you listen to school
24 districts, school boards, school presidents, principals,
25 and superintendents.

1 They all say, if you do anything for us, help us by
2 giving us the opportunity, the wherewithal, the financial
3 opportunity, especially, to build new schools. That is
4 what this would do. So I would just hope that Senators
5 would think very carefully about rejecting this. If we
6 can come up with a better formula, let us do it. But let
7 us not reject it outright just because, for whatever
8 reason, our colleagues may not be satisfied with the
9 formula.

10 Davis-Bacon, I might say, also applies to school
11 construction today. So this is not anything new here.
12 We have got Davis-Bacon application in school
13 construction. There is no reason why we should not
14 recognize the need for it here, too.

15 The Chairman. Senator Conrad, then Senator Nickles.
16 I wonder if we can vote after that, because there is a
17 vote on the floor of the Senate now.

18 Senator Conrad, Senator Nickles, then Senator Kerry.
19 Senator Conrad. I will be very brief, Mr. Chairman.
20 I want to strongly support this amendment because,
21 Mr. Chairman, my calculations show North Dakota gets \$46
22 million in school construction money. I think what the
23 Chairman was referring to is the large city allocation.
24 Certainly, we do not qualify there. But we do qualify
25 under the State allocation, and that is where most of the

1 money is. There is a desperate need for school
2 modernization and school construction in my State.

3 So, I want to thank the Senator from Massachusetts
4 for offering this amendment. It is certainly badly
5 needed in my State.

6 The Chairman. The Senator has made very clear what
7 I evidently did not make clear. But remember, in
8 addition, you are talking about 40 percent for big cities
9 and 60 percent for all the other States, but the larger
10 States and larger cities get a second dip in that second
11 60 percent.

12 Senator Nickles?

13 Senator Nickles. Mr. Chairman, there are lot of
14 good reasons to oppose this amendment. School
15 construction is the prerogative, it is the priority of
16 local school districts and local States. It is not the
17 priority of the Federal Government to be building
18 schools.

19 I might ask staff, and correct me if I am wrong, but
20 is the Department of Education going to be deciding which
21 school gets to be built? The demands are much greater
22 than \$25 billion. Who decides who gets a school
23 building?

24 Mr. Prater. There is an approval and review
25 process, Senator Nickles, on how the program works.

1 Senator Nickles. Done by the Department of
2 Education?

3 Mr. Prater. Yes, sir.

4 Senator Nickles. That is an excellent reason to be
5 against this. This is not something the Federal
6 Government should be doing. It is also bad tax policy.
7 To be saying someone would be getting a tax credit, to
8 me, is a serious mistake.

9 We now have tax-free bonds for school construction,
10 for local and State governments that is already
11 governmental support in helping local officials. But
12 they decide. They make the decision.

13 If we go in and say, well, you get a tax credit for
14 this school, not for this school, or we think this school
15 should be renovated or this school should be rebuilt, I
16 think, is federal micromanagement.

17 Included in federal micromanagement is expansion of
18 Davis-Bacon. I would tell my colleague from South
19 Dakota, Davis-Bacon does not apply to school construction
20 in many, many States. In many States.

21 So for us to have a federal mandate that now we are
22 going to have a new program, and oh, yes, if you qualify
23 you are going to have to have the Federal Government,
24 Department of Labor, come in and say what the wage rates
25 would be for renovation in a school in South Dakota or in

1 rural Montana, with wage rates that may be far in excess
2 of what they pay for local construction, is only going to
3 drive up construction costs and basically deliver less
4 construction for the dollar than what they are presently
5 doing.

6 I think this amendment is fatally flawed and I would
7 urge my colleagues to vote no.

8 The Chairman. Senator Kerry?

9 Senator Kerry. Well, Mr. Chairman, obviously I
10 disagree.

11 The Chairman. Senator Kerry, you are entitled to
12 the last remarks. Let me call on Senator Gramm.

13 Senator Gramm. Yes. I want to clarify something.
14 I think people may be getting confused about tax credit.
15 What this amendment would do, is in lieu of an interest
16 payment by the school system that borrows the money,
17 people would receive a federal tax credit.

18 This is a direct expenditure of funds through the Tax
19 Code. This is a terrible precedent to set. We are going
20 to have it in many other areas if we start down this road
21 and we are going to end up with a Federal Government
22 building all the schools in the country.

23 Senator Kerry. Mr. Chairman?

24 The Chairman. Senator Kerry?

25 Senator Kerry. Nothing could be further from the

1 truth. Just nothing could be further from the truth.
2 There is no federal mandate here, there is no federal
3 bureaucracy here, there is no federal intrusion here.

4 This is an effort by the Federal Government to do the
5 best of what we do sometimes, and less and less in
6 current generation, which is a partnership where we
7 leverage the capacity of a local community to do
8 something it cannot do otherwise, and wants to
9 desperately.

10 Now, Mr. Chairman, we have got to get some reality
11 into our discussions around here a little bit. To
12 suggest that this somehow mandates or is an intrusion,
13 this is an offering. This is a menu. Not every
14 community can use a private authorization bond. That is
15 what the Chairman has in here.

16 But there are plenty of communities that do not get
17 any advantage to that. You are prepared to allow a
18 private entity to do something with leverage from the
19 Federal Government, but you will not allow the public one
20 to do it.

21 Now, we have got a problem in this country. Property
22 tax is what funds our schools. We are sitting here
23 complaining about the Federal Government conceivably
24 leveraging the capacity of a community that has no tax
25 base to be able to build a school. No tax base, Mr.

1 Chairman. They cannot get an override where there is a
2 restraint on property tax, and they cannot get the money.
3 So what happens? The kids get cheated.

4 There is not a teacher in America who will not say to
5 you today that kids cannot learn in a classroom with 35
6 students or 30 students. Lower classroom size is one of
7 the most important priorities for the Nation.

8 We just let 195 million people in here on H1B visas.
9 Why? Because there is a worker shortage in America? No,
10 Mr. Chairman. There is no worker shortage. There is a
11 skill shortage because we are not funding the capacity of
12 our kids to be able to get the kind of education they
13 deserve.

14 Where does this go? This is targeted towards Title
15 1. It is a formula. Most of us in here voted for that.
16 Ideology is getting in the way of supporting those
17 communities that most need the help. That is what Title
18 1 is, poor kids, the places that do not have a tax base
19 to be able to build a pretty school like they get in so
20 many parts of America where a lot of rich people live.

21 Now, we have an opportunity to simply give them a
22 chance to make their own choice. We do not tell them
23 what to do. If they do not want to do it, Mr. Chairman,
24 they do not do it. But here is a way to mitigate against
25 the cost of this extraordinary construction. Sixty

1 percent of this, I might add, is available under formula
2 also to this school-based population where they have the
3 kids.

4 So there are two components of formula here: poor
5 kids, Title 1, and where they have the most kids, which,
6 I might add, often translates into those places where
7 they also do not have the tax base.

8 So we can talk about a great education in America,
9 but tax policy has always been an expenditure, in
10 essence. A tax expenditure. When you forego raising a
11 tax, or you give a break, or you give an income tax
12 credit, you are making a decision about a priority. We
13 do that for countless businesses.

14 We got reams of pages of Code that give businesses
15 all the breaks in the world, and we will not give a
16 school district the same kind of break to be able to
17 build a school. That is what this amendment is about,
18 and I would hope my colleagues would support it.

19 Senator Lott. Mr. Chairman, we have less than five
20 minutes left on two recorded votes back to back. Are we
21 going to be able to vote on this amendment and then go to
22 final passage?

23 The Chairman. I would like to vote right now. Yes.
24 Would the Clerk call the roll?

25 The Clerk. Mr. Hatch?

1 Senator Hatch. No.
2 The Clerk. Mr. Murkowski?
3 Senator Murkowski. No.
4 The Clerk. Mr. Nickles?
5 Senator Nickles. No.
6 The Clerk. Mr. Gramm of Texas?
7 Senator Gramm. No.
8 The Clerk. Mr. Lott?
9 Senator Lott. No.
10 The Clerk. Mr. Jeffords?
11 Senator Jeffords. No.
12 The Clerk. Mr. Thompson?
13 Senator Thompson. No.
14 The Clerk. Ms. Snowe?
15 Senator Snowe. No.
16 The Clerk. Mr. Kyl?
17 Senator Kyl. No.
18 The Clerk. Mr. Baucus?
19 Senator Baucus. Aye.
20 The Clerk. Mr. Rockefeller?
21 Senator Rockefeller. Aye.
22 The Clerk. Mr. Daschle?
23 Senator Daschle. Aye.
24 The Clerk. Mr. Breaux?
25 Senator Breaux. Aye.

- 1 The Clerk. Mr. Conrad?
- 2 Senator Conrad. Aye.
- 3 The Clerk. Mr. Graham of Florida?
- 4 Senator Graham. Aye.
- 5 The Clerk. Mr. Bingaman?
- 6 Senator Bingaman. Aye.
- 7 The Clerk. Mr. Kerry?
- 8 Senator Kerry. Aye.
- 9 The Clerk. Mr. Torricelli?
- 10 Senator Torricelli. Aye.
- 11 The Clerk. Mrs. Lincoln?
- 12 Senator Lincoln. Aye.
- 13 The Clerk. Mr. Chairman?
- 14 The Chairman. No.
- 15 The Clerk. Mr. Chairman, the tally is 10 ayes, 10
- 16 nays.
- 17 The Chairman. Ten ayes, 10 nays. The amendment is
- 18 defeated on a tie vote.
- 19 I would now ask that the Chairman's mark, as amended,
- 20 be adopted. Without objection, so ordered.
- 21 I now ask that the committee favorably report the
- 22 Affordable Education Act of 2001, as amended, and I would
- 23 ask for the yeas and nays.
- 24 The Clerk will call the roll.
- 25 The Clerk. Mr. Hatch?

1 Senator Hatch. Aye.
2 The Clerk. Mr. Murkowski?
3 Senator Murkowski. Aye.
4 The Clerk. Mr. Nickles?
5 Senator Nickles. Aye.
6 The Clerk. Mr. Gramm of Texas?
7 Senator Gramm. Aye.
8 The Clerk. Mr. Lott?
9 Senator Lott. Aye.
10 The Clerk. Mr. Jeffords?
11 Senator Jeffords. Aye.
12 The Clerk. Mr. Thompson?
13 Senator Thompson. Aye.
14 The Clerk. Ms. Snowe?
15 Senator Snowe. Aye.
16 The Clerk. Mr. Kyl?
17 Senator Kyl. Aye.
18 The Clerk. Mr. Baucus?
19 Senator Baucus. Aye.
20 The Clerk. Mr. Rockefeller?
21 Senator Rockefeller. Aye.
22 The Clerk. Mr. Daschle?
23 Senator Daschle. Aye.
24 The Clerk. Mr. Breaux?
25 Senator Breaux. Aye.

1 The Clerk. Mr. Conrad?

2 Senator Conrad. Aye.

3 The Clerk. Mr. Graham of Florida?

4 Senator Graham. Aye.

5 The Clerk. Mr. Bingaman?

6 Senator Bingaman. Aye.

7 The Clerk. Mr. Kerry?

8 Senator Kerry. Aye.

9 The Clerk. Mr. Torricelli?

10 Senator Torricelli. Aye.

11 The Clerk. Mrs. Lincoln?

12 Senator Lincoln. Aye.

13 The Clerk. Mr. Chairman?

14 The Chairman. Aye.

15 The Clerk. Mr. Chairman, the tally is 20 ayes, zero
16 nays.

17 The Chairman. By a vote of 20-0, the bill is
18 favorably reported.

19 Finally, I would ask that the staff have authority to
20 draft necessarily technical and conforming changes to the
21 Chairman's mark.

22 Without objection, so ordered.

23 The committee is adjourned. I thank everybody for
24 their cooperation.

25 [Whereupon, at 11:17 a.m., the meeting was

1 concluded.]

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**UNITED STATES SENATE
COMMITTEE ON FINANCE**

Tuesday, March 13, 2001

10:00 a.m.

215 Dirksen Senate Office Building

**OPEN EXECUTIVE SESSION
AGENDA**

**Chairman's Mark
Affordable Education Act of 2001**



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

<http://finance.senate.gov>
Press_Office@finance.senate.gov

Contact: Jill Kozeny, Jill Gerber
202/224-6447

Opening Statement of Chairman Chuck Grassley
Mark-up, *The Affordable Education Act of 2001*
March 13, 2001

Three weeks ago, this committee began the process of examining tax-related education legislation in a full-committee hearing. Two things are very clear to me based on that hearing. First, higher education is becoming less and less affordable for the typical American family. Second, the Senate is interested in increasing our commitment to education on all levels. At our hearing on Feb. 14, 2001, a record number of senators testified before this committee on various proposals to improve education.

This chairman's mark builds on the bipartisan work of this committee in the last two Congresses. Most recently, in the 106th Congress, the committee reported out the Affordable Education Act. That legislation passed in the Senate last year, but unfortunately was vetoed and did not become law.

The mark works to make education more affordable by expanding some of the tools already established in our tax code. For example, it:

- raises the amount that can be contributed to an education saving account from \$500 to \$2,000;
- makes distributions from pre-paid college savings plans and tuition plans tax-free and permits consortia of private colleges and universities to offer pre-paid tuition plans;
- makes permanent the tax-free treatment of employer provided educational assistance;
- removes a limitation on the deductibility of student loan interest and adjusts the income limits; and
- improves local options for the construction and renovation of public schools.

I hope we'll report a package of education tax improvements today. We will then have taken the next step toward enactment of legislation to make education more affordable.

**DESCRIPTION OF CHAIRMAN'S MARK OF THE
"AFFORDABLE EDUCATION ACT OF 2001"**

Scheduled for Markup

By the

SENATE COMMITTEE ON FINANCE

on March 13, 2001

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION



March 9, 2001
JCX-9-01

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INTRODUCTION

The Senate Committee on Finance has scheduled a markup on March 13, 2001, on a proposed Chairman's mark of the "Affordable Education Act of 2001". This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's mark. It contains a description of proposals to (1) modify the rules relating to Education IRAs; (2) establish private-prepaid tuition programs and provide an exclusion from gross income for certain distributions from qualified tuition programs; (3) expand and extend the exclusion for employer-provided educational assistance; (4) modify the student loan interest deduction; (5) eliminate tax on certain awards; and (6) modify the tax treatment of certain types of bonds for educational facilities and activities.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of Chairman's Mark of the "Affordable Education Act of 2001"* (JCX-9-01), March 9, 2001.

I. MODIFICATIONS TO EDUCATION IRAS

Present Law

In general

Section 530 of the Internal Revenue Code (the "Code") provides tax-exempt status to education individual retirement accounts ("education IRAs"), meaning certain trusts or custodial accounts which are created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of a designated beneficiary. Contributions to education IRAs may be made only in cash.² Annual contributions to education IRAs may not exceed \$500 per beneficiary (except in cases involving certain tax-free rollovers, as described below) and may not be made after the designated beneficiary reaches age 18.

Phase-out of contribution limit

The \$500 annual contribution limit for education IRAs is generally phased out ratably for contributors with modified adjusted gross income ("AGI") between \$95,000 and \$110,000. The phase-out range for married taxpayers filing a joint return is \$150,000 to \$160,000 of modified AGI. Individuals with modified AGI applicable above the phase-out range are not allowed to make contributions to an education IRA established on behalf of any individual.

Treatment of distributions

Earnings on contributions to an education IRA generally are subject to tax when withdrawn. However, distributions from an education IRA are excludable from the gross income of the beneficiary to the extent that the total distribution does not exceed the "qualified higher education expenses" incurred by the beneficiary during the year the distribution is made.

If the qualified higher education expenses of the beneficiary for the year are less than the total amount of the distribution (i.e., contributions and earnings combined) from an education IRA, then the qualified higher education expenses are deemed to be paid from a pro-rata share of both the principal and earnings components of the distribution. Thus, in such a case, only a portion of the earnings are excludable (i.e., the portion of the earnings based on the ratio that the qualified higher education expenses bear to the total amount of the distribution) and the remaining portion of the earnings is includible in the beneficiary's gross income.

The earnings portion of a distribution from an education IRA that is includible in income is also subject to an additional 10-percent tax. The 10-percent additional tax does not apply if a distribution is made on account of the death or disability of the designated beneficiary, or if made on account of a scholarship received by the designated beneficiary.

² Special estate and gift tax rules apply to contributions made to and distributions made from education IRAs.

The additional 10-percent tax also does not apply to the distribution of any contribution to an education IRA made during the taxable year if such distribution is made on or before the date that a return is required to be filed (including extensions of time) by the beneficiary for the taxable year during which the contribution was made (or, if the beneficiary is not required to file such a return, April 15th of the year following the taxable year during which the contribution was made).

Present law allows tax-free transfers or rollovers of account balances from one education IRA benefiting one beneficiary to another education IRA benefiting another beneficiary (as well as redesignations of the named beneficiary), provided that the new beneficiary is a member of the family of the old beneficiary.

Any balance remaining in an education IRA is deemed to be distributed within 30 days after the date that the beneficiary reaches age 30 (or, if earlier, within 30 days of the date that the beneficiary dies).

Qualified higher education expenses

The term "qualified higher education expenses" includes tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the designated beneficiary at an eligible education institution, regardless of whether the beneficiary is enrolled at an eligible educational institution on a full-time, half-time, or less than half-time basis. Moreover, the term qualified higher education expenses includes certain room and board expenses for any period during which the beneficiary is at least a half-time student. Qualified higher education expenses include expenses with respect to undergraduate or graduate-level courses. In addition, qualified higher education expenses include amounts paid or incurred to purchase tuition credits (or to make contributions to an account) under a qualified State tuition program, as defined in section 529, for the benefit of the beneficiary of the education IRA.

Qualified higher education expenses generally include only out-of-pocket expenses. Such qualified higher education expenses do not include expenses covered by educational assistance for the benefit of the beneficiary that is excludable from gross income. Thus, total qualified higher education expenses are reduced by scholarship or fellowship grants excludable from gross income under present-law section 117, as well as any other tax-free educational benefits, such as employer-provided educational assistance that is excludable from the employee's gross income under section 127.

Present law also provides that, if any qualified higher education expenses are taken into account in determining the amount of the exclusion for a distribution from an education IRA, then no deduction (e.g., for trade or business expenses), exclusion (e.g., for interest on education savings bonds) or credit is allowed with respect to such expenses.

Eligible educational institutions are defined by reference to section 481 of the Higher Education Act of 1965. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, a graduate-level or professional degree, or another recognized post-secondary credential. Certain proprietary

institutions and post-secondary vocational institutions also are eligible institutions. The institution must be eligible to participate in Department of Education student aid programs.

Time for making contributions

Contributions to an education IRA for a taxable year are taken into account for the taxable year in which they are made.

Coordination with HOPE and Lifetime Learning credits

If an exclusion from gross income is allowed for distributions from an education IRA with respect to an individual, then neither the HOPE nor Lifetime Learning credit may be claimed in the same taxable year with respect to the same individual. However, an individual may elect to waive the exclusion with respect to distributions from an education IRA. If such a waiver is made, then the HOPE or Lifetime Learning credit may be claimed with respect to the individual for the taxable year.

Coordination with qualified tuition programs

An excise tax is imposed if a contribution is made by any person to an education IRA during any taxable year in which any contributions are made by anyone to a qualified State tuition program on behalf of the same beneficiary.

Description of Proposal

Annual contribution limit

The proposal would increase the annual education IRA contribution limit from \$500 to \$2,000. Thus, under the proposal, aggregate contributions that may be made by all contributors to one (or more) education IRAs established on behalf of any particular beneficiary would be limited to \$2,000 for each year.

Special needs beneficiaries

The proposal would provide that the rule prohibiting contributions to an education IRA after the beneficiary attains 18 would not apply in the case of a special needs beneficiary (as defined by Treasury Department regulations). In addition, a deemed distribution of any balance in an education IRA would not occur when a special needs beneficiary reaches age 30.

Contributions by persons other than individuals

The proposal would clarify that corporations and other entities (including tax-exempt organizations) are permitted to make contributions to education IRAs, regardless of the income of the corporation or entity during the year of the contribution.

Contributions permitted until April 15

Under the proposal, individual contributors to education IRAs would be deemed to have

made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the individual's Federal income tax return for such taxable year (not including extensions). Thus, individual contributors generally would be allowed to make contributions for a year until April 15 of the following year.

Coordination with HOPE and Lifetime Learning credits

The proposal would allow a taxpayer to claim a HOPE credit or Lifetime Learning credit for a taxable year and to exclude from gross income amounts distributed (both the contributions and the earnings portions) from an education IRA on behalf of the same student as long as the distribution is not used for the same educational expenses for which a credit was claimed.

Coordination with qualified tuition programs

The proposal would repeal the excise tax on contributions made by any person to an education IRA on behalf of a beneficiary during any taxable year in which any contributions are made by anyone to a qualified State tuition program on behalf of the same beneficiary.

Redesignation of education IRAs as education savings accounts

The proposal would rename "education IRAs" as "education savings accounts."

Effective Date

The provisions modifying education IRAs would be effective for taxable years beginning after December 31, 2001.

II. PRIVATE PRE-PAID TUITION PROGRAMS; EXCLUSION FROM GROSS INCOME OF EDUCATION DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS

Present Law

Section 529 of the Code provides tax-exempt status to "qualified State tuition programs," meaning certain programs established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary, or (2) make contributions to an account that is established for the purpose of meeting qualified higher education expenses of the designated beneficiary of the account (a "savings account plan"). The term "qualified higher education expenses" generally has the same meaning as does the term for purposes of education IRAs (as described above) and, thus, includes expenses for tuition, fees, books, supplies, and equipment required for the enrollment or attendance at an eligible educational institution,³ as well as certain room and board expenses for any period during which the student is at least a half-time student.

No amount is included in the gross income of a contributor to, or a beneficiary of, a qualified State tuition program with respect to any distribution from, or earnings under, such program, except that (1) amounts distributed or educational benefits provided to a beneficiary are included in the beneficiary's gross income (unless excludable under another Code section) to the extent such amounts or the value of the educational benefits exceed contributions made on behalf of the beneficiary, and (2) amounts distributed to a contributor (e.g., when a parent receives a refund) are included in the contributor's gross income to the extent such amounts exceed contributions made on behalf of the beneficiary.⁴

A qualified State tuition program is required to provide that purchases or contributions only be made in cash.⁵ Contributors and beneficiaries are not allowed to direct the investment of contributions to the program (or earnings thereon). The program is required to maintain a separate accounting for each designated beneficiary. A specified individual must be designated as the beneficiary at the commencement of participation in a qualified State tuition program (i.e., when contributions are first made to purchase an interest in such a program), unless interests in such a program are purchased by a State or local government or a tax-exempt charity described in section 501(c)(3) as part of a scholarship program operated by such government or charity under which beneficiaries to be named in the future will receive such interests as scholarships.

A transfer of credits (or other amounts) from one account benefiting one designated beneficiary to another account benefiting a different beneficiary is considered a distribution (as is a change in the designated beneficiary of an interest in a qualified State tuition program), unless

³ An "eligible education institution" is defined the same for purposes of education IRAs (described in Part I, above) and qualified State tuition programs.

⁴ Distributions from qualified State tuition programs are treated as representing a pro-rata share of the contributions and earnings in the account.

⁵ Special estate and gift tax rules apply to contributions made to and distributions made from qualified State tuition programs.

the beneficiaries are members of the same family. For this purpose, the term "member of the family" means: (1) the spouse of the beneficiary; (2) a son or daughter of the beneficiary or a descendent of either; (3) a stepson or stepdaughter of the beneficiary; (4) a brother, sister, stepbrother or stepsister of the beneficiary; (5) the father or mother of the beneficiary or an ancestor of either; (6) a stepfather or stepmother of the beneficiary; (7) a son or daughter of a brother or sister of the beneficiary; (8) a brother or sister of the father or mother of the beneficiary; (9) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or (10) the spouse of any person described in (2)-(9).

Earnings on an account may be refunded to a contributor or beneficiary, but the State or instrumentality must impose a more than de minimis monetary penalty unless the refund is (1) used for qualified higher education expenses of the beneficiary, (2) made on account of the death or disability of the beneficiary, or (3) made on account of a scholarship received by the beneficiary to the extent the amount refunded does not exceed the amount of the scholarship used for higher education expenses.

To the extent that a distribution from a qualified State tuition program is used to pay for qualified tuition and related expenses (as defined in sec. 25A(f)(1)), the beneficiary (or another taxpayer claiming the beneficiary as a dependent) may claim the HOPE credit or Lifetime Learning credit with respect to such tuition and related expenses (assuming that the other requirements for claiming the HOPE credit or Lifetime Learning credit are satisfied and the modified AGI phaseout for those credits does not apply).

Description of Proposal

Qualified tuition program

The proposal would expand the definition of "qualified tuition program" to include certain prepaid tuition programs established and maintained by one or more eligible educational institutions (which may be private institutions) that satisfy the requirements under section 529 (other than the present-law State sponsorship rule). In the case of a qualified tuition program maintained by one or more private eligible educational institutions, persons would be able to purchase tuition credits or certificates on behalf of a designated beneficiary (as set forth in sec. 529(b)(1)(A)(i)), but would not be able to make contributions to a savings account plan (as described in section 529(b)(1)(A)(ii)).

Exclusion from gross income

Under the proposal, an exclusion from gross income would be provided for distributions made in taxable years beginning after December 31, 2001, from qualified State tuition programs to the extent that the distribution is used to pay for qualified higher education expenses. This exclusion from gross income is extended to distributions from qualified tuition programs established and maintained by an entity other than a State or agency or instrumentality thereof, for distributions made in taxable years after December 31, 2003.

Coordination with HOPE and Lifetime Learning credits

The proposal would allow a taxpayer to claim a HOPE credit or Lifetime Learning credit

for a taxable year and to exclude from gross income amounts distributed (both the principal and the earnings portions) from a qualified tuition program on behalf of the same student as long as the distribution is not used for the same expenses for which a credit was claimed.

Rollovers for benefit of same beneficiary

The proposal would provide that a transfer of credits (or other amounts) from one qualified tuition program for the benefit of a designated beneficiary to another qualified tuition program for the benefit of the same beneficiary would not be considered a distribution for a maximum of three such transfers.

Member of family

The proposal would provide that, for purposes of tax-free rollovers and changes of designated beneficiaries, a "member of the family" includes first cousins of the original beneficiary.

Effective Date

The provision would be effective for taxable years beginning after December 31, 2001, except that the exclusion from gross income for certain distributions from a qualified tuition program established and maintained by an entity other than a State (or agency or instrumentality thereof) would be effective for taxable years beginning after December 31, 2003.

III. EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Present Law

Educational expenses paid by an employer for its employees are generally deductible by the employer.

Employer-paid educational expenses are excludable from the gross income and wages of an employee if provided under a section 127 educational assistance plan or if the expenses qualify as a working condition fringe benefit under section 132. Section 127 provides an exclusion of \$5,250 annually for employer-provided educational assistance. The exclusion does not apply to graduate courses beginning after June 30, 1996. The exclusion for employer-provided educational assistance for undergraduate courses expires with respect to courses beginning after December 31, 2001.

In order for the exclusion to apply, certain requirements must be satisfied. The educational assistance must be provided pursuant to a separate written plan of the employer. The educational assistance program must not discriminate in favor of highly compensated employees. In addition, not more than five percent of the amounts paid or incurred by the employer during the year for educational assistance under a qualified educational assistance plan can be provided for the class of individuals consisting of more than 5-percent owners of the employer (and their spouses and dependents).

Educational expenses that do not qualify for the section 127 exclusion may be excludable from income as a working condition fringe benefit.⁶ In general, education qualifies as a working condition fringe benefit if the employee could have deducted the education expenses under section 162 if the employee paid for the education. In general, education expenses are deductible by an individual under section 162 if the education (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer's employer, applicable law or regulations imposed as a condition of continued employment. However, education expenses are generally not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business.⁷

Description of Proposal

The proposal would extend the exclusion for employer-provided educational assistance to graduate education, and would make the exclusion (as applied to both undergraduate and graduate education) permanent.

⁶ These rules also apply in the event that section 127 expires.

⁷ In the case of an employee, education expenses (if not reimbursed by the employer) may be claimed as an itemized deduction only if such expenses, along with other miscellaneous expenses, exceed two percent of the taxpayer's AGI. An individual's total deductions may also be reduced by the overall limitation of itemized deductions under section 68. These limitations do not apply in determining whether an item is excludable from income as a working condition fringe benefit.

Effective Date

The provision would be effective with respect to courses beginning after December 31, 2001.

IV. MODIFICATIONS TO STUDENT LOAN INTEREST DEDUCTION

Present Law

Certain individuals may claim an above-the-time deduction for interest paid on qualified education loans, subject to a maximum annual deduction limit. The deduction is allowed only with respect to interest paid on a qualified education loan during the first 60 months in which interest payments are required. Required payments of interest generally do not include voluntary payments, such as interest payments made during a period of loan forbearance. Months during which interest payments are not required because the qualified education loan is in deferral or forbearance do not count against the 60-month period. No deduction is allowed to an individual if that individual is claimed as a dependent on another taxpayer's return for the taxable year.

A qualified education loan generally is defined as any indebtedness incurred solely to pay for certain costs of attendance (including room and board) of a student (who may be the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred) who is enrolled in a degree program on at least a half-time basis at (1) an accredited post-secondary educational institution defined by reference to section 481 of the Higher Education Act of 1965, or (2) an institution conducting an internship or residency program leading to a degree or certificate from an institution of higher education, a hospital, or a health care facility conducting postgraduate training.

The maximum allowable deduction per tax return is \$2,500. The deduction is phased out ratably for single taxpayers with modified AGI between \$40,000 and \$55,000 and for married taxpayers filing joint returns with modified AGI between \$60,000 and \$75,000. The income ranges will be indexed for inflation after 2002.

Description of Proposal

The proposal would increase the income phase-out ranges for eligibility for the student loan interest deduction to \$50,000 to \$65,000 for single taxpayers and to \$100,000 to \$130,000 for married taxpayers filing joint returns. These income phase-out ranges would be indexed for inflation after 2002.

The proposal would repeal both the limit on the number of months during which interest paid on a qualified education loan is deductible and the restriction that voluntary payments of interest are not deductible.

Effective Date

The proposal would be effective for interest paid on qualified education loans after December 31, 2001.

**V. ELIMINATE TAX ON AWARDS UNDER THE
NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM
AND THE F. EDWARD HEBERT ARMED FORCES HEALTH
PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM**

Present Law

Section 117 excludes from gross income amounts received as a qualified scholarship by an individual who is a candidate for a degree and used for tuition and fees required for the enrollment or attendance (or for fees, books, supplies, and equipment required for courses of instruction) at a primary, secondary, or post-secondary educational institution. The tax-free treatment provided by section 117 does not extend to scholarship amounts covering regular living expenses, such as room and board. In addition to the exclusion for qualified scholarships, section 117 provides an exclusion from gross income for qualified tuition reductions for certain education provided to employees (and their spouses and dependents) of certain educational organizations.

The exclusion for qualified scholarships and qualified tuition reductions does not apply to any amount received by a student that represents payment for teaching, research, or other services by the student required as a condition for receiving the scholarship or tuition reduction.

The National Health Service Corps Scholarship Program (the "NHSC Scholarship Program") and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program (the "Armed Forces Scholarship Program") provide education awards to participants on condition that the participants provide certain services. In the case of the NHSC Program, the recipient of the scholarship is obligated to provide medical services in a geographic area (or to an underserved population group or designated facility) identified by the Public Health Service as having a shortage of health care professionals. In the case of the Armed Forces Scholarship Program, the recipient of the scholarship is obligated to serve a certain number of years in the military at an armed forces medical facility. Because the recipients are required to perform services in exchange for the education awards, the awards used to pay higher education expenses are taxable income to the recipient.

Description of Proposal

The proposal would provide that amounts received by an individual under the NHSC Scholarship Program or the Armed Forces Scholarship Program are eligible for tax-free treatment as qualified scholarships under section 117, without regard to any service obligation by the recipient. As with other qualified scholarships under section 117, the tax-free treatment would not apply to amounts received by students for regular living expenses, including room and board.

Effective Date

The proposal would be effective for education awards received after December 31, 2001.

VI. TAX BENEFITS FOR CERTAIN TYPES OF BONDS FOR EDUCATIONAL FACILITIES AND ACTIVITIES

Present Law

Tax-exempt bonds

In general

Interest on debt⁸ incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds (Code sec. 103).⁹ Like other activities carried out or paid for by States and local governments, the construction, renovation, and operation of public schools is an activity eligible for financing with the proceeds of tax-exempt bonds.

Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person is taxable unless the purpose of the borrowing is approved specifically in the Code or in a non-Code provision of a revenue Act. These bonds are called "private activity bonds."¹⁰ The term "private person" includes the Federal Government and all other individuals and entities other than States or local governments.

Private activities eligible for financing with tax-exempt private activity bonds

Present law includes several exceptions permitting States or local governments to act as conduits providing tax-exempt financing for private activities. Both capital expenditures and limited working capital expenditures of charitable organizations described in section 501(c)(3) of the Code -- including elementary, secondary, and post-secondary schools -- may be financed with tax-exempt private activity bonds ("qualified 501(c)(3) bonds").

States or local governments may issue tax-exempt "exempt-facility bonds" to finance property for certain private businesses. Business facilities eligible for this financing include transportation (airports, ports, local mass commuting, and high speed intercity rail facilities); privately owned and/or privately operated public works facilities (sewage, solid waste disposal, local district heating or cooling, and hazardous waste disposal facilities); privately-owned and/or operated low-income rental housing; and certain private facilities for the local furnishing of electricity or gas. A further provision allows tax-exempt financing for "environmental enhancements of hydro-electric generating facilities." Tax-exempt financing also is authorized for capital expenditures for small manufacturing facilities and land and equipment for first-time farmers ("qualified small-issue bonds"), local redevelopment activities ("qualified redevelopment bonds"), and eligible empowerment zone and enterprise community businesses.

⁸ Hereinafter referred to as "State or local government bonds."

⁹ Interest on this debt is included in calculating the "adjusted current earnings" preference of the corporate alternative minimum tax.

¹⁰ Interest on private activity bonds (other than qualified 501(c)(3) bonds) is a preference item in calculating the alternative minimum tax.

Tax-exempt private activity bonds also may be issued to finance limited non-business purposes: certain student loans and mortgage loans for owner-occupied housing ("qualified mortgage bonds" and "qualified veterans' mortgage bonds").

Private activity tax-exempt bonds may not be issued to finance schools for private, for-profit businesses.

In most cases, the aggregate volume of private activity tax-exempt bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. These annual volume limits are equal to \$62.50 per resident of the State, or \$187.5 million if greater. The volume limits are scheduled to increase to the greater of \$75 per resident of the State or \$225 million in calendar year 2002. After 2002, the volume limits will be indexed annually for inflation.

Arbitrage restrictions on tax-exempt bonds

The Federal income tax does not apply to the income of States and local governments that is derived from the exercise of an essential governmental function. To prevent these tax-exempt entities from issuing more Federally subsidized tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods" before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Present law includes three exceptions to the arbitrage rebate requirements applicable to education-related bonds. First, issuers of all types of tax-exempt bonds are not required to rebate arbitrage profits if all of the proceeds of the bonds are spent for the purpose of the borrowing within six months after issuance.¹¹ Second, in the case of bonds to finance certain construction activities, including school construction and renovation, the six-month period is extended to 24 months. Arbitrage profits earned on construction proceeds are not required to be rebated if all such proceeds (other than certain retainage amounts) are spent by the end of the 24-month period and prescribed intermediate spending percentages are satisfied.¹² Issuers qualifying for this "construction bond" exception may elect to be subject to a fixed penalty payment regime in lieu of rebate if they fail to satisfy the spending requirements.

¹¹ In the case of governmental bonds (including bonds to finance public schools), the six-month expenditure exception is treated as satisfied if at least 95 percent of the proceeds is spent within six months and the remaining five percent is spent within 12 months after the bonds are issued.

¹² Retainage amounts are limited to no more than five percent of the bond proceeds, and these amounts must be spent for the purpose of the borrowing no later than 36 months after the bonds are issued.

Third, governmental bonds issued by "small" governments are not subject to the rebate requirement. Small governments are defined as general purpose governmental units that issue no more than \$5 million of tax-exempt governmental bonds in a calendar year. The \$5 million limit is increased to \$10 million if at least \$5 million of the bonds are used to finance public schools.¹³

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, States and local governments are given the authority to issue "qualified zone academy bonds." Under present law, a total of \$400 million of qualified zone academy bonds may be issued in each of 1998 through 2001. The \$400 million aggregate bond authority is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit to qualified zone academies within such State. A State may carry over any unused allocation for up to two years (three years for authority arising before 2000).

Certain financial institutions (i.e., banks, insurance companies, and corporations actively engaged in the business of lending money) that hold qualified zone academy bonds are entitled to a nonrefundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond. An eligible financial institution holding a qualified zone academy bond on the credit allowance date (i.e., each one-year anniversary of the issuance of the bond) is entitled to a credit. The credit amount is includible in gross income (as if it were a taxable interest payment on the bond), and the credit may be claimed against regular income tax and alternative minimum tax liability.

The Treasury Department sets the credit rate daily at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The maximum term of the bonds also is determined by the Treasury Department, so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond. Present value is determined using as a discount rate the average annual interest rate of tax-exempt obligations with a term of 10 years or more issued during the month.

"Qualified zone academy bonds" are defined as bonds issued by a State or local government, provided that: (1) at least 95 percent of the proceeds is used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone academy" and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase

¹³ The Small Business Job Protection Act of 1996 permitted issuance of the additional \$5 million in public school bonds by small governments. Previously, small governments were defined as governments that issued no more than \$5 million of governmental bonds without regard to the purpose of the financing.

graduation and employment rates, and (3) either (a) the school is located in a designated empowerment zone or a designated enterprise community, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

Description of Proposal

Increase amount of governmental bonds that may be issued by governments qualifying for the "small governmental unit" arbitrage rebate exception

The additional amount of governmental bonds for public schools that small governmental units may issue without being subject to the arbitrage rebate requirement would be increased from \$5 million to \$10 million. Thus, these governmental units could issue up to \$15 million of governmental bonds in a calendar year provided that at least \$10 million of the bonds were used for public schools.

Allow issuance of tax-exempt bonds for privately owned public school facilities

The private activities for which tax-exempt bonds may be issued would be expanded to include elementary and secondary public school facilities which are owned by private, for-profit corporations pursuant to public-private partnership agreements with a State or local educational agency. The school facilities for which these bonds are issued would be required to be operated by a public educational agency as part of a system of public schools. Issuance of these bonds would be subject to an annual per-State volume limit equal to the greater of \$10 per resident (\$5 million, if greater) in lieu of the present-law State private activity bond volume limits.

Effective Date

The provisions would be effective for bonds issued after December 31, 2001.

ESTIMATED REVENUE EFFECTS OF THE CHAIRMAN'S MARK OF
 THE "AFFORDABLE EDUCATION ACT OF 2001"
 SCHEDULED FOR MARKUP BY THE COMMITTEE ON FINANCE ON MARCH 13, 2001

Fiscal Years 2002 - 2011

[Millions of Dollars]

Provision	Effective	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2002-06	2002-11
1. Education IRAs - Increase the annual contribution limit to \$2,000; allow education IRA contributions for special needs beneficiaries above the age of 18; allow corporations and other entities to contribute to education IRAs; allow contributions until April 15 of the following year; allow a taxpayer to exclude ED IRA distributions from gross income and claim the HOPE or Lifetime Learning credits as long as they are not used for the same expenses; repeal excise tax on contributions made to education IRA when beneficiary to OTP	lyba 12/31/01	-174	-314	-396	-482	-574	-670	-770	-873	-981	-1,113	-1,939	-6,345
2. Qualified Tuition Plans - tax-free distributions from State plans; allow private institutions to offer prepaid tuition plans, tax-deferred in 2002, with tax-free distributions beginning in 2004; allow a taxpayer to exclude OTP distributions from gross income and claim the HOPE or Lifetime Learning credits as long as they are not used for the same expenses; expand definition of family member to include cousins	lyba 12/31/01	-23	-50	-76	-105	-133	-160	-188	-220	-240	-265	-387	-1,460
3. Employer Provided Assistance - permanently extend the exclusion for undergraduate courses and graduate level courses	cba 12/31/01	-519	-720	-760	-804	-852	-904	-958	-1,012	-1,068	-1,127	-3,656	-8,725
4. Student loan interest - eliminate the 60-month rule; increase phaseout ranges to \$50,000-\$65,000 single/\$100,000-\$130,000 joint; indexed for inflation after 2002	lpa 12/31/01	-170	-245	-262	-277	-289	-305	-321	-338	-356	-375	-1,243	-2,937
5. Eliminate the tax on awards under the National Health Corps Scholarship program and F. Edward Hebert Armed Forces Health Professions Scholarship program	lyba 12/31/01	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-9
6. Increase arbitrage rebate exception for governmental bonds used to finance qualified school construction from \$10 million to \$15 million	bia 12/31/01	[1]	-3	-5	-6	-11	-15	-16	-17	-18	-19	-25	-109

Provision	Effective	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2002-06	2002-11
7. Issuance of tax-exempt private activity bonds for qualified education facilities with annual volume cap the greater of \$10 per resident or \$5 million	bia 12/31/01	-5	-19	-38	-61	-88	-120	-155	-191	-224	-257	-212	-1,160
NET TOTAL		-892	-1,352	-1,538	-1,736	-1,948	-2,175	-2,409	-2,652	-2,888	-3,157	-7,467	-20,745

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:
 bia = bonds issued after
 cba = courses beginning after
 ipa = interest paid after
 tyba = taxable years beginning after

[1] Loss of less than \$500,000.



DESCRIPTION OF MODIFICATIONS TO THE CHAIRMAN'S MARK OF THE "AFFORDABLE EDUCATION ACT OF 2001"

This document, prepared by the staff of the Joint Committee on Taxation, provides a description of modifications to the Senate Finance Committee Chairman's mark of the Affordable Education Act of 2001.¹

The Chairman's mark would be modified as follows:

1. Exclusion from income of education distributions from qualified tuition programs

The Chairman's mark would provide an exclusion from gross income for distributions from qualified tuition programs to the extent the distribution is used to pay for qualified higher education expenses. The exclusion would be effective for distributions from qualified State tuition plans after December 31, 2001, and for distributions from private tuition plans after December 31, 2003. Under present law and the Chairman's mark, qualified higher education expenses would include room and board expenses up to the minimum room and board allowance applicable to the student in calculating costs of attendance for Federal financial aid programs under section 472 of the Higher Education Act of 1965, as in effect on the date of enactment of the Small Business Job Protection Act of 1996 (August 20, 1996). Thus, room and board expenses cannot exceed: (1) in the case of a student living at home with parents or guardians, \$1,500 per academic year; (2) for a student living in housing owned or operated by the eligible education institution, the institution's "normal" room and board charge; and (3) for all other students, \$2,500 per academic year.

The modification to the Chairman's mark would provide that, for purposes of the exclusion for distributions from qualified tuition plans, the maximum room and board allowance would be the amount applicable to the student in calculating costs of attendance for Federal financial aid programs under section 472 of the Higher Education Act of 1965, as in effect on the date of enactment of this Act, or, in the case of a student living in housing owned or operated by

¹ A description of the Chairman's mark is contained in Joint Committee on Taxation, *Description of Chairman's Mark of the "Affordable Education Act of 2001"* (JCX-9-01), March 9, 2001.

an eligible educational institution, the actual amount charged the student by the educational institution for room and board.²

2. Education IRAs

Income phase-out range for married taxpayers filing joint returns

Under present law, the annual contribution limits for education IRAs is generally phased out for contributors with modified adjusted gross income ("AGI") between \$95,000 to \$110,000. The phase-out range for married taxpayers filing a joint return is \$150,000 to \$160,000 of modified AGI.

The modification to the Chairman's mark would increase the phase-out range for married taxpayers filing a joint return so that it is twice the range for single taxpayers. Thus, the phase-out range for married taxpayers filing a joint return would be \$190,000 to \$220,000.

The provision would be effective for taxable years beginning after December 31, 2001.

Elementary and secondary school expenses

The modification would expand the definition of qualified education expenses that may be paid with tax-free distributions from an education IRA to include qualified elementary and secondary education expenses, meaning (1) tuition, fees, academic tutoring, special needs services, books, supplies, and equipment (including computers and related software and services incurred in connection with the enrollment or attendance of the designated beneficiary as an elementary or secondary student at a public, private or religious school, and (2) room and board, uniforms, transportation, and supplementary items and services (including extended-day programs) required or provided by such a school in connection with such enrollment or attendance.

The modification would be effective for taxable years beginning after December 31, 2001.

Redesignation of education IRAs

The modification would redesignate education IRAs as Coverdell Education Savings Accounts.

² This definition would also apply to distributions from educational IRAs.

AMENDMENTS
Affordable Education Act of 2001

1. Hatch-Jeffords Provide an above-the-line deduction for teachers' professional development expenses and the costs of out-of-pocket classroom supplies.
2. Nickles Employer-Provided Computer and Internet Access
3. Jeffords Exclusion from income for student loan indebtedness forgiven by the Secretary of Education pursuant to section 428J of the Higher Education Act
4. Jeffords Bank deductibility for carrying costs of tax-exempt bonds issued by a governmental entity on behalf of tax-exempt organizations issuing less than \$10 million of tax-exempt bonds during the calendar year.
5. Jeffords Removal of 2% floor on itemized deductions with respect to costs incurred by teachers for certification by the National Board for Professional Teaching Standards. Alternatively, a tax credit for 50% of the costs incurred.
6. Jeffords Enhanced lifetime learning credit for expenses incurred for certification as math or science teachers.
7. Snowe Credit for Interest Paid on Student Loans
8. Snowe Deduction for Higher Education Tuition and Fees
9. Graham Treatment of room and board expenses under Section 529
10. Bingaman Cerro Grande Fire Assistance clarification
11. Kerry HOPE Credit Expansion (150)
12. Kerry HOPE Credit Expansion (200)
13. Kerry Tax-free National Service Awards
14. Kerry Teacher Salary Exemption
15. Kerry School Construction
16. Torricelli-Lott Renames Education Individual Retirement Accounts "Coverdell Education Savings Accounts" and allows tax-free expenditures for elementary and secondary school expenses. It also ensures that contributions made by third parties are tax-exempt to the contributor.

17. Torricelli Raises the income phase-out of the HOPE credit from \$40,000 to \$50,000 for singles (\$80,000 to \$100,000 for couples) to \$50,000 and \$60,000 for singles and \$100,000 to \$120,000 for couples.

18. Torricelli Makes college tuition tax deduction in conjunction with the Hope credit, provides families a choice between the deduction and the Lifetime Learning credit, and allow a deduction on tuition for families who are ineligible for either the HOPE or Lifetime Learning credits.

19. Torricelli-Hatch Fixes the marriage penalty in the income phase-out range for the Education Savings Accounts

**HATCH-JEFFORDS AMENDMENT
TAX EQUITY FOR SCHOOL TEACHERS
PROVIDE AN ABOVE-THE-LINE DEDUCTION FOR TEACHERS'
PROFESSIONAL DEVELOPMENT EXPENSES AND
THE COSTS OF OUT-OF-POCKET CLASSROOM SUPPLIES**

The Hatch-Jeffords amendment would provide an above-the-line tax deduction for school teachers' professional development expenses and for the costs of supplies they provide for their classrooms.

Under current law, teachers may deduct these expenses, but only as miscellaneous itemized deductions, subject to a 2-percent floor. **Example:** Wendy Ruffner is a fifth-year high school chemistry teacher in Utah. She is single and earns \$35,000 per year. Last year she incurred \$740 in expenses for chemistry periodicals and for a course she took over the summer to increase her knowledge of chemistry. Wendy also incurred \$100 in out-of-pocket expenses for classroom supplies such as copies, periodic tables, and so forth. Wendy's expenses are deductible, but only to the extent they exceed 2 percent of her AGI (\$700). Thus, only \$140 is deductible, but only if Wendy itemizes her deductions. Most teachers do not have enough deductions to itemize.

The Hatch-Jeffords amendment would allow Wendy to deduct the entire \$840 in expenses whether she itemizes or not. See attached bill.

We have not yet received the estimate of the revenue loss associated with this amendment.



107TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to allow an above-the-line deduction for certain professional development expenses and classroom supplies of elementary and secondary school teachers.

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 "Tax Equity for School
5 Teachers Act of 2001".

1 SEC. 2. DEDUCTION FOR CERTAIN PROFESSIONAL DEVEL-
2 OPMENT EXPENSES AND CLASSROOM SUP-
3 PLIES OF ELEMENTARY AND SECONDARY
4 SCHOOL TEACHERS.

5 (a) DEDUCTION ALLOWED WHETHER OR NOT TAX-
6 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)(2)
7 of section 62 of the Internal Revenue Code of 1986 (defin-
8 ing adjusted gross income) is amended by adding at the
9 end the following new subparagraph:

10 “(D) CERTAIN PROFESSIONAL DEVELOP-
11 MENT EXPENSES AND CLASSROOM SUPPLIES
12 FOR TEACHERS.—The deductions allowed by
13 section 162 which consist of qualified profes-
14 sional development expenses and qualified ele-
15 mentary and secondary education expenses paid
16 or incurred by an eligible teacher.”.

17 (b) DEFINITIONS.—Section 62 of the Internal Rev-
18 enue Code of 1986 is amended by adding at the end the
19 following new subsection:

20 “(d) QUALIFIED EXPENSES OF ELIGIBLE TEACH-
21 ERS.—For purposes of subsection (a)(2)(D)—

22 “(1) QUALIFIED PROFESSIONAL DEVELOPMENT
23 EXPENSES.—

24 “(A) IN GENERAL.—The term ‘qualified
25 professional development expenses’ means ex-
26 penses for tuition, fees, books, supplies, equip-

1 ment, and transportation required for the en-
2 rollment or attendance of an individual in a
3 qualified course of instruction.

4 “(B) QUALIFIED COURSE OF INSTRU-
5 TION.—The term ‘qualified course of instruc-
6 tion’ means a course of instruction which—

7 “(i) is—

8 “(I) directly related to the cur-
9 riculum and academic subjects in
10 which an eligible teacher provides in-
11 struction, or

12 “(II) designed to enhance the
13 ability of an eligible teacher to under-
14 stand and use State standards for the
15 academic subjects in which such
16 teacher provides instruction.

17 “(ii) may—

18 “(I) provide instruction in how to
19 teach children with different learning
20 styles, particularly children with dis-
21 abilities and children with special
22 learning needs (including children who
23 are gifted and talented). or

24 “(II) provide instruction in how
25 best to discipline children in the class-

‡

1 room and identify early and appro-
2 priate interventions to help children
3 described in subclause (I) to learn.

4 “(iii) is tied to challenging State or
5 local content standards and student per-
6 formance standards,

7 “(iv) is tied to strategies and pro-
8 grams that demonstrate effectiveness in in-
9 creasing student academic achievement
10 and student performance, or substantially
11 increasing the knowledge and teaching
12 skills of an eligible teacher, and

13 “(v) is part of a program of profes-
14 sional development which is approved and
15 certified by the appropriate local edu-
16 cational agency as furthering the goals of
17 the preceding clauses.

18 “(C) LOCAL EDUCATIONAL AGENCY.—The
19 term ‘local educational agency’ has the meaning
20 given such term by section 14101 of the Ele-
21 mentary and Secondary Education Act of 1965,
22 as in effect on the date of the enactment of this
23 subsection.

24 “(2) QUALIFIED ELEMENTARY AND SECONDARY
25 EDUCATION EXPENSES.—The term ‘qualified ele-

1 elementary and secondary education expenses' means
2 expenses for any taxable year for books, supplies
3 (other than nonathletic supplies for courses of in-
4 struction in health or physical education), computer
5 equipment (including related software and services)
6 and other equipment, and supplementary materials
7 used by an eligible teacher in the classroom.

8 "(3) ELIGIBLE TEACHER.—

9 "(A) IN GENERAL.—The term 'eligible
10 teacher' means an individual who is a kinder-
11 garten through grade 12 classroom teacher, in-
12 structor, counselor, aide, or principal in an ele-
13 mentary or secondary school on a full-time
14 basis for an academic year ending during a tax-
15 able year.

16 "(B) ELEMENTARY OR SECONDARY
17 SCHOOL.—The term 'elementary or secondary
18 school' means any school which provides ele-
19 mentary education or secondary education
20 (through grade 12), as determined under State
21 law."

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2000.

2

AMENDMENT BY SENATOR NICKLES

EMPLOYER-PROVIDED COMPUTER & INTERNET ACCESS

The amendment would modify Section 127 (dealing with employer-provided educational assistance) to provide that employer-provided computers and internet access would not be included as taxable compensation to an employee.

3

JEFFORDS AMENDMENT # 1

Exclusion from income for student loan indebtedness forgiven by the Secretary of Education pursuant to section 428J of the Higher Education Act.

Section 428J of the Higher Education Act of 1965 authorizes the Secretary of Education to forgive up to \$5,000 in student loans for any new borrower, on or after October 1998, who has been employed as a full-time teacher for five consecutive complete school years in a low-income school. Teachers must be teaching in subject areas relevant to their academic major, and must not be in default on their student loans. Without an exclusion from income under the Internal Revenue Code, student loans forgiven pursuant to this program are subject to tax.

JEFFORDS AMENDMENT #2

Bank deductibility for carrying costs of tax-exempt bonds issued by a governmental entity on behalf of tax-exempt organizations issuing less than \$10 million of tax-exempt bonds during the calendar year.

Section 265(b) of the Internal Revenue Code disallows, in the case of banks and financial institutions, an interest expense deduction for the portion of the taxpayer's interest expense allocable to tax-exempt interest. Section 265(b)(3) provides an exception for certain tax-exempt obligations, including bonds issued by a qualified small issuer. A qualified small issuer is one that is reasonably anticipated to issue less than \$10 million of tax-exempt obligations during the calendar year. This exception allows small higher educational institutions to reduce their cost of borrowing funds through the use of private placements.

In some states, statewide or regional authorities are authorized to issue tax-exempt bonds on behalf of small tax-exempt higher education and health facilities. The volume of bonds issued by the state or regional authority may well exceed \$10 million during the calendar year, although many of the tax-exempt organizations on whose behalf bonds are issued do not exceed the \$10 million limit. These organizations cannot benefit from the cost savings associated with the small user exception.

Proposal: A statewide or regional bond-issuing authority could elect to treat each borrower as the issuer of a separate bond issue, so that the small issuer exception could apply for tax-exempt organizations that do not issue more than \$10 million of tax-exempt debt during a calendar year.

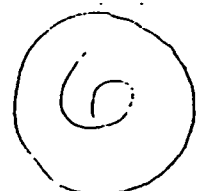
5

JEFFORDS AMENDMENT #3

Removal of 2% floor on itemized deductions with respect to costs incurred by teachers for certification by the National Board for Professional Teaching Standards. Alternatively, a tax credit for 50% of the costs incurred.

The National Board for Professional Teaching Standards provides an opportunity to undergo an assessment process to be certified as teachers meeting standards of national excellence. The first 81 National Board Certified Teachers were named in 1995. As of November 1999, the total had reached 4,799. Currently, the fee for assessment by the Board is \$2300.

Proposal: Remove the 2% floor on miscellaneous itemized deductions with respect to such costs.



JEFFORDS AMENDMENT #4

Enhanced lifetime learning credit for expenses incurred for certification as math or science teachers.

Current law: A taxpayer is allowed a lifetime learning credit equal to 20 percent of qualified tuition and related expenses of up to \$10,000 (after 12/31/01).

Proposal: For expenses directly attributable to a taxpayer's effort to obtain certification as a math or science teacher, the percentage of the credit would be raised to 50%.

7

Amendment proposed by Senator Olympia Snowe

Credit for Interest Paid on Student Loans

Provide a maximum annual tax credit of \$1,500 for interest paid on student loans during the first 60 months of repayment. The AGI phase-out for the credit would be from \$50,000-\$60,000 for individual taxpayers and from \$100,000-\$120,000 for joint returns. As under the current law deduction, the AGI limit would adjusted for inflation. No double benefit would be allowed for any amount claimed as a deduction.

8

Amendment proposed by Senator Olympia Snowe

Deduction for Higher Education Tuition & Fees

Provide a maximum annual tax deduction of \$4,000 in 2002, \$8,000 in 2003, and \$12,000 in 2004 and thereafter for qualified higher education expenses. The deduction would be available to all taxpayers through the 28 percent tax bracket, phased-out over the following \$15,000 AGI. No double benefit would be allowed for any expenses that are otherwise claimed for a deduction or credit.

Qualified education expenses include tuition and fees charged by an institution of higher education for the enrollment or attendance of the taxpayer, the taxpayer's spouse, dependents, or grandchildren. The expenses must be attributed to courses for an undergraduate degree at an institution of higher education or toward a certificate of required coursework at a vocational school, but not a graduate program. The student must be enrolled at least one-half the normal full-time workload as determined by the institution. Eligible fees do not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to a student's academic course of instruction.

Graham Amendment #1

Current Law

Section 529 of the Code provides tax-exempt status to "qualified State tuition programs" under which persons may purchase tuition credits or make contributions to accounts that are established for the purpose of meeting qualified higher education expenses of a designated beneficiary. Distributions from such accounts are taxed at the beneficiary's income tax rate if such distributions are used for qualified higher education expenses. Qualified higher education expenses include room and board, but this amount is limited to the minimum room and board allowance determined in calculating the "cost of attendance" for federal financial aid programs under section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711) as in effect on August 5, 1997.

Chairman's Mark

The Chairman's Mark excludes distributions from qualified tuition plans from taxable income to the extent that such distributions are used to pay qualified higher education expenses. In addition, the Chairman's Mark expands the definition of "qualified tuition program" to include certain prepaid tuition programs established and maintained by one or more eligible educational institutions. The Chairman's mark makes no changes to the allowable distributions for room and board costs.

Graham Amendment

The Graham amendment modifies the limitation on allowable room and board expenses to be the greater of (1) the "cost of attendance" calculated for federal financial aid purposes as established under the Higher Education Act (as amended in 1998) or (2) the actual invoice amount that students residing in housing owned by the educational institution are charged by such institution.

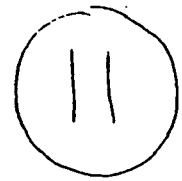
Rationale

Currently, qualified distributions under Section 529 for room and board are limited to \$1,500 per academic year for students living at home, \$2,500 per academic year for students living off campus, or the "normal" cost of room and board for students living on campus. The \$1,500 and \$2,500 dollar limits are not indexed for inflation. The Graham amendment would tie the limits for at-home and off-campus room and board to the "cost of attendance" calculated by each school under the Higher Education Act (as amended in 1998) in determining the student's financial aid eligibility. In addition, qualified distributions for on-campus students would be based on the amount actually billed by the institution for room and board expenses.

10

Bingaman Amendment #1

Last year, Congress passed the Cerro Grande Fire Assistance Act (the Act) Pub. L. No. 106-246, 114 Stat. 511 to compensate the victims of the fire initiated by the National Park Service at Bandelier National Monument, New Mexico. Many of the claimants that received partial payments from the government last year have been unable to receive guidance from the Internal Revenue Service as to whether such payments should be treated as income. This amendment would clarify that certain parts of their federal reimbursement are not considered income for tax purposes.



**Kerry Amendment to the Chairman's Mark
HOPE Credit Expansion**

Under current law, a student may receive a non-refundable tax credit for 100% of the first \$1,000 of qualified tuition and related expenses and 50% of the second \$1,000 of qualified tuition and related expenses. The amendment would amend Section 25A (f) and change the definition of "tuition and related expenses" for the HOPE tax credit to include the cost of books, transportation, and other non-mandatory expenses. In lieu of itemizing these costs, and in order to ease record keeping burdens and reduce the possibility of fraud, Section 25A (b) would be amended to reflect that students would receive a \$150 credit per full credit course for qualified expenses.

The amendment allows students to claim a non-refundable credit not to exceed \$1,500 total, which includes any combination of the following credits:

- 100% of the first \$1,000 of tuition and qualified expenses and 50% of the second \$1,000 of tuition and qualified expenses

For example, if a student paid \$1000 in tuition to a community college and took three full-credit courses, she/he would receive a credit of \$1225:

\$1000 x 100% = \$1000
\$150 x 50% = \$75
\$150 x 50% = \$75
\$150 x 50% = \$75

Summary: Currently HOPE Scholarship benefits derive from the cost of tuition. Community colleges have low tuition and thus many of their students do not qualify for the maximum tax benefit. The average community college tuition is \$1328, but a student's "tuition and qualified expense" need to exceed \$2000 in order to qualify for the \$1500 maximum HOPE tax credit. Community colleges serve the highest numbers of the neediest students in higher education, and 79% of public community colleges have tuition so low that their students do not qualify for the maximum HOPE tax credit. In 1998, 42% of HOPE and Lifetime Learning went to people with incomes over \$50,000, including single filers. This amendment would help poorer students attending less expensive colleges, especially community colleges, but also help less affluent students at state colleges.

**Kerry Amendment to the Chairman's Mark
HOPE Credit Expansion**

Under current law, a student may receive a non-refundable tax credit for 100% of the first \$1,000 of qualified tuition and related expenses and 50% of the second \$1,000 of qualified tuition and related expenses. The amendment would amend Section 25A (f) and change the definition of "qualified tuition and related expenses" of the HOPE tax credit to include the cost of books, transportation, and other non-mandatory expenses. In lieu of itemizing these costs, and in order to ease record keeping burdens and reduce the possibility of fraud, Section 25A (b) would be amended to reflect that students would receive a \$200 credit per full credit course for qualified expenses.

The amendment allows students to claim a non-refundable credit not to exceed \$1,500 total, which includes any combination of the following credits:

- 100% of the first \$1,000 of tuition and qualified expenses and 50% of the second \$1,000 of tuition and qualified expenses.

For example, if a student paid \$1000 in tuition to a community college and took three full-credit courses, she/he would receive a credit of \$1300:

- \$1000 x 100% = \$1000
- \$200 x 50% = \$100
- \$200 x 50% = \$100
- \$200 x 50% = \$100

Summary: Currently HOPE Scholarship benefits derive from the cost of tuition. Community colleges have low tuition and thus many of their students do not qualify for the maximum tax benefit. The average community college tuition is \$1328, but a student's "tuition and qualified expense" need to exceed \$2000 in order to qualify for the \$1500 maximum HOPE tax credit. Community colleges serve the highest numbers of the neediest students in higher education, and 79% of public community colleges have tuition so low that their students do not qualify for the maximum HOPE tax credit. In 1998, 42% of HOPE and Lifetime Learning went to people with incomes over \$50,000, including single filers. This amendment would help poorer students attending less expensive colleges, especially community colleges, but also help less affluent students at state colleges.

Kerry Amendment to the Chairman's Mark
Tax-free National Service Awards

Under current law, scholarships and grants are excludable from income. However, because the Americorps stipends received for college education through the National Service Corps (Americorps) program are considered taxable income. The amendment amends Section 117 (related to qualified scholarships) by eliminating the federal tax liability on these awards. The Joint Committee on Taxation estimated the cost to be \$3 million per year in lost revenue.

Summary:

Currently Americorps education awards may be used for education and tuition expenses or the repayment of student loans. Generally, scholarships are excludable from income under section 117 of the tax code. However, because the Americorps awards are considered to represent payment for service, they are included in taxable income. As a result, the tax treatment of Americorps education awards creates a significant hardship for volunteers. Americorps educational awards, which are sent directly to the loan agency or educational institution, are not income from which a portion may be reserved for the beneficiary for the payment of tax.

Kerry Amendment to the Chairman's Mark
Teacher Salary Exemption

Under current law, all public school teachers pay full federal income tax. The amendment would provide all teachers that teach in public schools located in high-needs districts with an exemption on the first \$20,000 of their salaries. A high-needs district is one that serves elementary schools and secondary schools for which a minimum of 50 percent of the student population is eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act. Before public school teachers in a state can participate in this program, the state must enter into an agreement with the Secretary stating their commitment to increase the salaries of public school teachers. This agreement must contain the state's projected increase in public school teachers' salaries over five years.

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**Kerry Amendment to the Chairman's Mark
School Construction**

Amendment: The Johnson-Rangel school construction bill (attached) as amended by S. 243
(attached).

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THE AFFORDABLE EDUCATION ACT
AS AMENDED BY H.L.C. ADDING AT THE
END THE FOLLOWING.

~~1 SEC. 1400K. EXPANSION OF INCENTIVES FOR PUBLIC SCHOOLS.~~
~~2 (a) IN GENERAL.—Chapter 1 of the Internal Rev-~~
~~3 enue Code of 1986 is amended by adding at the end the~~
~~4 following new subchapter: SOC. XXX—~~
5 **"Subchapter Y—Public School Modernization**
6 **Provisions**

- "Sec. 1400K. Credit to holders of qualified public school modernization bonds.
- "Sec. 1400L. Qualified school construction bonds.
- "Sec. 1400M. Qualified zone academy bonds.

7 **"SEC. 1400K. CREDIT TO HOLDERS OF QUALIFIED PUBLIC**
8 **SCHOOL MODERNIZATION BONDS.**

9 "(a) ALLOWANCE OF CREDIT.—In the case of a tax-
10 payer who holds a qualified public school modernization
11 bond on a credit allowance date of such bond which occurs
12 during the taxable year, there shall be allowed as a credit
13 against the tax imposed by this chapter for such taxable
14 year an amount equal to the sum of the credits determined
15 under subsection (b) with respect to credit allowance dates
16 during such year on which the taxpayer holds such bond.

17 "(b) AMOUNT OF CREDIT.—

18 "(1) IN GENERAL.—The amount of the credit
19 determined under this subsection with respect to any
20 credit allowance date for a qualified public school
21 modernization bond is 25 percent of the annual
22 credit determined with respect to such bond

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1 “(2) ANNUAL CREDIT.—The annual credit de-
2 termined with respect to any qualified public school
3 modernization bond is the product of—

4 “(A) the applicable credit rate, multiplied
5 by

6 “(B) the outstanding face amount of the
7 bond.

8 “(3) APPLICABLE CREDIT RATE —For purposes
9 of paragraph (1), the applicable credit rate with re-
10 spect to an issue is the rate equal to an average
11 market yield (as of the day before the date of
12 issuance of the issue) on outstanding long-term cor-
13 porate debt obligations (determined under regula-
14 tions prescribed by the Secretary)

15 “(4) SPECIAL RULE FOR ISSUANCE AND RE-
16 DEMPTION.—In the case of a bond which is issued
17 during the 3-month period ending on a credit allow-
18 ance date, the amount of the credit determined
19 under this subsection with respect to such credit al-
20 lowance date shall be a ratable portion of the credit
21 otherwise determined based on the portion of the 3-
22 month period during which the bond is outstanding.
23 A similar rule shall apply when the bond is re-
24 deemed.

25 “(c) LIMITATION BASED ON AMOUNT OF TAX --

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1 “(1) IN GENERAL.—The credit allowed under
2 subsection (a) for any taxable year shall not exceed
3 the excess of—

4 “(A) the sum of the regular tax liability
5 (as defined in section 26(b)) plus the tax im-
6 posed by section 55, over

7 “(B) the sum of the credits allowable
8 under part IV of subchapter A (other than sub-
9 part C thereof, relating to refundable credits)

10 “(2) CARRYOVER OF UNUSED CREDIT.—If the
11 credit allowable under subsection (a) exceeds the
12 limitation imposed by paragraph (1) for such taxable
13 year, such excess shall be carried to the succeeding
14 taxable year and added to the credit allowable under
15 subsection (a) for such taxable year.

16 “(d) QUALIFIED PUBLIC SCHOOL MODERNIZATION
17 BOND; CREDIT ALLOWANCE DATE.—For purposes of this
18 section—

19 “(1) QUALIFIED PUBLIC SCHOOL MODERNIZA-
20 TION BOND.—The term ‘qualified public school mod-
21 ernization bond’ means—

22 “(A) a qualified zone academy bond, and

23 “(B) a qualified school construction bond

24 “(2) CREDIT ALLOWANCE DATE.—The term
25 ‘credit allowance date’ means—

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- 1 “(A) March 15,
2 “(B) June 15,
3 “(C) September 15, and
4 “(D) December 15.

5 Such term includes the last day on which the bond
6 is outstanding.

7 “(e) OTHER DEFINITIONS.—For purposes of this
8 subchapter—

9 “(1) LOCAL EDUCATIONAL AGENCY.—The term
10 ‘local educational agency’ has the meaning given to
11 such term by section 14101 of the Elementary and
12 Secondary Education Act of 1965. Such term in-
13 cludes the local educational agency that serves the
14 District of Columbia but does not include any other
15 State agency.

16 “(2) BOND.—The term ‘bond’ includes any ob-
17 ligation.

18 “(3) STATE.—The term ‘State’ includes the
19 District of Columbia and any possession of the
20 United States.

21 “(4) PUBLIC SCHOOL FACILITY.—The term
22 ‘public school facility’ shall not include—

23 “(A) any stadium or other facility pri-
24 marily used for athletic contests or exhibitions

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1 or other events for which admission is charged
2 to the general public, or

3 "(B) any facility which is not owned by a
4 State or local government or any agency or in-
5 strumentality of a State or local government.

6 "(I) CREDIT INCLUDED IN GROSS INCOME.—Gross
7 income includes the amount of the credit allowed to the
8 taxpayer under this section (determined without regard to
9 subsection (c)) and the amount so included shall be treat-
10 ed as interest income.

11 "(g) RECAPTURE OF PORTION OF CREDIT WHERE
12 CESSATION OF COMPLIANCE.—

13 "(1) IN GENERAL.—If any bond which when
14 issued purported to be a qualified public school mod-
15 ernization bond ceases to be a qualified public school
16 modernization bond, the issuer shall pay to the
17 United States (at the time required by the Sec-
18 retary) an amount equal to the sum of—

19 "(A) the aggregate of the credits allowable
20 under this section with respect to such bond
21 (determined without regard to subsection (c))
22 for taxable years ending during the calendar
23 year in which such cessation occurs and the 2
24 preceding calendar years, and

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1 “(B) interest at the underpayment rate
2 under section 6621 on the amount determined
3 under subparagraph (A) for each calendar year
4 for the period beginning on the first day of
5 such calendar year.

6 “(2) FAILURE TO PAY.—If the issuer fails to
7 timely pay the amount required by paragraph (1)
8 with respect to such bond, the tax imposed by this
9 chapter on each holder of any such bond which is
10 part of such issue shall be increased (for the taxable
11 year of the holder in which such cessation occurs) by
12 the aggregate decrease in the credits allowed under
13 this section to such holder for taxable years begin-
14 ning in such 3 calendar years which would have re-
15 sulted solely from denying any credit under this sec-
16 tion with respect to such issue for such taxable
17 years.

18 “(3) SPECIAL RULES.—

19 “(A) TAX BENEFIT RULE.—The tax for
20 the taxable year shall be increased under para-
21 graph (2) only with respect to credits allowed
22 by reason of this section which were used to re-
23 duce tax liability. In the case of credits not so
24 used to reduce tax liability, the carryforwards

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1 **"SEC. 1400L. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

2 **"(a) QUALIFIED SCHOOL CONSTRUCTION FOND.—**

3 For purposes of this subchapter, the term 'qualified school
4 construction bond' means any bond issued as part of an
5 issue if—

6 **"(1)** 95 percent or more of the proceeds of such
7 issue are to be used for the construction, rehabilita-
8 tion, or repair of a public school facility or for the
9 acquisition of land on which such a facility is to be
10 constructed with part of the proceeds of such issue.

11 **"(2)** the bond is issued by a State or local gov-
12 ernment within the jurisdiction of which such school
13 is located.

14 **"(3)** the issuer designates such bond for pur-
15 poses of this section, and

16 **"(4)** the term of each bond which is part of
17 such issue does not exceed 15 years.

18 **"(b) LIMITATION ON AMOUNT OF BONDS DES-**
19 **IGNATED.—** The maximum aggregate face amount of
20 bonds issued during any calendar year which may be des-
21 ignated under subsection (a) by any issuer shall not exceed
22 the sum of—

23 **"(1)** the limitation amount allocated under sub-
24 section (d) for such calendar year to such issuer;
25 and

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1 “(2) if such issuer is a large local educational
2 agency (as defined in subsection (e)(4)) or is issuing
3 on behalf of such an agency, the limitation amount
4 allocated under subsection (a) for such calendar year
5 to such agency.

6 “(c) NATIONAL LIMITATION ON AMOUNT OF BONDS
7 DESIGNATED. --There is a national qualified school con-
8 struction bond limitation for each calendar year. Such lim-
9 itation is—

10 “(1) \$11,000,000,000 for 2002.

11 “(2) \$11,000,000,000 for 2003, and

12 “(3) except as provided in subsection (f) zero
13 after 2003.

14 “(d) 60 PERCENT OF LIMITATION ALLOCATED
15 AMONG STATES. --

16 “(1) IN GENERAL.-- 60 percent of the limitation
17 applicable under subsection (c) for any calendar year
18 shall be allocated by the Secretary among the States
19 in proportion to the respective numbers of children
20 in each State who have attained age 5 but not age
21 18 for the most recent fiscal year ending before such
22 calendar year. The limitation amount allocated to a
23 State under the preceding sentence shall be allocated
24 by the State to issuers within such State and such

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1 allocations may be made only if there is an approved
2 State application.

3 "(2) MINIMUM ALLOCATIONS TO STATES.—

4 "(A) IN GENERAL. The Secretary shall
5 adjust the allocations under this subsection for
6 any calendar year for each State to the extent
7 necessary to ensure that the sum of—

8 "(i) the amount allocated to such
9 State under this subsection for such year,
10 and

11 "(ii) the aggregate amounts allocated
12 under subsection (e) to large local edu-
13 cational agencies in such State for such
14 year.

15 is not less than an amount equal to such
16 State's minimum percentage of the amount to
17 be allocated under paragraph (1) for the cal-
18 endar year

19 "(B) MINIMUM PERCENTAGE. --A State's
20 minimum percentage for any calendar year is
21 the minimum percentage described in section
22 1124(d) of the Elementary and Secondary Edu-
23 cation Act of 1965 (20 U.S.C. 6334(i)) for
24 such State for the most recent fiscal year end-
25 ing before such calendar year

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1 “(3) ALLOCATIONS TO CERTAIN POSSES-

2 SIONS.—The amount to be allocated under para-

3 graph (1) to any possession of the United States

4 other than Puerto Rico shall be the amount which

5 would have been allocated if all allocations under

6 paragraph (1) were made on the basis of respective

7 populations of individuals below the poverty line (as

8 defined by the Office of Management and Budget)

9 In making other allocations, the amount to be allo-

10 cated under paragraph (1) shall be reduced by the

11 aggregate amount allocated under this paragraph to

12 possessions of the United States.

13 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.— In

14 addition to the amounts otherwise allocated under

15 this subsection, \$200,000,000 for calendar year

16 2002, and \$200,000,000 for calendar year 2003,

17 shall be allocated by the Secretary of the Interior for

18 purposes of the construction, rehabilitation, and re-

19 pair of schools funded by the Bureau of Indian Af-

20 fairs. In the case of amounts allocated under the

21 preceding sentence, Indian tribal governments (as

22 defined in section 7871) shall be treated as qualified

23 issuers for purposes of this subchapter.

24 “(5) APPROVED STATE APPLICATION.—For

25 purposes of paragraph (1), the term ‘approved State

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1 application' means an application which is approved
2 by the Secretary of Education and which includes—

3 "(A) the results of a recent publicly-avail-
4 able survey (undertaken by the State with the
5 involvement of local education officials, mem-
6 bers of the public, and experts in school con-
7 struction and management) of such State's
8 needs for public school facilities, including de-
9 scriptions of—

10 "(i) health and safety problems at
11 such facilities,

12 "(ii) the capacity of public schools in
13 the State to house projected enrollments,
14 and

15 "(iii) the extent to which the public
16 schools in the State offer the physical in-
17 frastructure needed to provide a high-qual-
18 ity education to all students, and

19 "(B) a description of how the State will al-
20 locate to local educational agencies, or other-
21 wise use, its allocation under this subsection to
22 address the needs identified under subpara-
23 graph (A), including a description of how it
24 will—

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1 “(i) ensure that the needs of both
2 rural and urban areas will be recognized

3 “(ii) give highest priority to localities
4 with the greatest needs, as demonstrated
5 by inadequate school facilities coupled with
6 a low level of resources to meet those
7 needs,

8 “(iii) use its allocation under this sub-
9 section to assist localities that lack the us-
10 cal capacity to issue bonds on their own
11 and

12 “(iv) ensure that its allocation under
13 this subsection is used only to supplement,
14 and not supplant, the amount of school
15 construction, rehabilitation, and repair in
16 the State that would have occurred in the
17 absence of such allocation.

18 Any allocation under paragraph (1) by a State shall
19 be binding if such State reasonably determined that
20 the allocation was in accordance with the plan ap-
21 proved under this paragraph.

22 “(e) 40 PERCENT OF LIMITATION ALLOCATED
23 AMONG LARGEST SCHOOL DISTRICTS —

24 “(1) IN GENERAL. — 40 percent of the limitation
25 applicable under subsection (c) for any calendar year:

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1 shall be allocated under paragraph (2) by the Sec-
2 retary among local educational agencies which are
3 large local educational agencies for such year. No
4 qualified school construction bond may be issued by
5 reason of an allocation to a large local educational
6 agency under the preceding sentence unless such
7 agency has an approved local application.

8 “(2) ALLOCATION FORMULA.—The amount to
9 be allocated under paragraph (1) for any calendar
10 year shall be allocated among large local educational
11 agencies in proportion to the respective amounts
12 each such agency received for Basic Grants under
13 subpart 2 of part A of title I of the Elementary and
14 Secondary Education Act of 1965 (20 U.S.C. 6331
15 et seq.) for the most recent fiscal year ending before
16 such calendar year.

17 “(3) ALLOCATION OF UNUSED LIMITATION TO
18 STATE.—The amount allocated under this subsection
19 to a large local educational agency for any calendar
20 year may be reallocated by such agency to the State
21 in which such agency is located for such calendar
22 year. Any amount reallocated to a State under the
23 preceding sentence may be allocated as provided in
24 subsection (d)(1).

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1 “(4) LARGE LOCAL EDUCATIONAL AGENCY.—
2 For purposes of this section, the term ‘large local
3 educational agency’ means, with respect to a cal-
4 endar year, any local educational agency if such
5 agency is—

6 “(A) among the 100 local educational
7 agencies with the largest numbers of children
8 aged 5 through 17 from families living below
9 the poverty level, as determined by the Sec-
10 retary using the most recent data available
11 from the Department of Commerce that are
12 satisfactory to the Secretary, or

13 “(B) 1 of not more than 25 local edu-
14 cational agencies (other than those described in
15 subparagraph (A)) that the Secretary of Edu-
16 cation determines (based on the most recent
17 data available satisfactory to the Secretary) are
18 in particular need of assistance, based on a low
19 level of resources for school construction, a high
20 level of enrollment growth, or such other factors
21 as the Secretary deems appropriate

22 “(5) APPROVED LOCAL APPLICATION.—For
23 purposes of paragraph (1), the term ‘approved local
24 application’ means an application which is approved
25 by the Secretary of Education and which includes—

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1 “(A) the results of a recent publicly-avail-
2 able survey (undertaken by the local educational
3 agency or the State with the involvement of
4 school officials, members of the public, and ex-
5 perts in school construction and management)
6 of such agency's needs for public school facili-
7 ties, including descriptions of—

8 “(i) the overall condition of the local
9 educational agency's school facilities, in-
10 cluding health and safety problems

11 “(ii) the capacity of the agency's
12 schools to house projected enrollments, and

13 “(iii) the extent to which the agency's
14 schools offer the physical infrastructure
15 needed to provide a high-quality education
16 to all students.

17 “(B) a description of how the local edu-
18 cational agency will use its allocation under this
19 subsection to address the needs identified under
20 subparagraph (A), and

21 “(C) a description of how the local edu-
22 cational agency will ensure that its allocation
23 under this subsection is used only to supple-
24 ment, and not supplant, the amount of school
25 construction, rehabilitation, or repair in the lo-

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1 cally that would have occurred in the absence
2 of such allocation.

3 A rule similar to the rule of the last sentence of sub-
4 section (d)(6) shall apply for purposes of this para-
5 graph.

6 "(f) CARRYOVER OF UNUSED LIMITATION. —If for
7 any calendar year—

8 "(1) the amount allocated under subsection (d)
9 to any State, exceeds

10 "(2) the amount of bonds issued during such
11 year which are designated under subsection (a) pur-
12 suant to such allocation,

13 the limitation amount under such subsection for such
14 State for the following calendar year shall be increased
15 by the amount of such excess. A similar rule shall apply
16 to the amounts allocated under subsection (d)(5) or (e).

17 "(g) SPECIAL RULES RELATING TO ARBITRATION. —

18 "(1) IN GENERAL. —A bond shall not be treated
19 as failing to meet the requirement of subsection
20 (a)(1) solely by reason of the fact that the proceeds
21 of the issue of which such bond is a part are in-
22 vested for a temporary period (but not more than 36
23 months) until such proceeds are needed for the pur-
24 pose for which such issue was issued

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1 “(2) BINDING COMMITMENT REQUIREMENT —
2 Paragraph (1) shall apply to an issue only if, as of
3 the date of issuance, there is a reasonable expecta-
4 tion that—

5 “(A) at least 10 percent of the proceeds of
6 the issue will be spent within the 6-month pe-
7 riod beginning on such date for the purpose for
8 which such issue was issued, and

9 “(B) the remaining proceeds of the issue
10 will be spent with due diligence for such pur-
11 pose.

12 “(3) EARNINGS ON PROCEEDS.—Any earnings
13 on proceeds during the temporary period shall be
14 treated as proceeds of the issue for purposes of ap-
15 plying subsection (a)(1) and paragraph (1) of this
16 subsection.

17 **“SEC. 1400M. QUALIFIED ZONE ACADEMY BONDS.**

18 “(a) QUALIFIED ZONE ACADEMY BOND.—For pur-
19 poses of this subchapter—

20 “(1) IN GENERAL.—The term ‘qualified zone
21 academy bond’ means any bond issued as part of an
22 issue if—

23 “(A) 95 percent or more of the proceeds of
24 such issue are to be used for a qualified pur-

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1 pose with respect to a qualified zone academy
2 established by a local educational agency;

3 "(B) the bond is issued by a State or local
4 government within the jurisdiction of which
5 such academy is located,

6 "(C) the issuer —

7 "(i) designates such bond for purposes
8 of this section,

9 "(ii) certifies that it has written as-
10 surances that the private business con-
11 tribution requirement of paragraph (2) will
12 be met with respect to such academy, and

13 "(iii) certifies that it has the written
14 approval of the local educational agency
15 for such bond issuance, and

16 "(D) the term of each bond which is part
17 of such issue does not exceed 15 years

18 Rules similar to the rules of section 1400L(1) shall
19 apply for purposes of paragraph (1).

20 "(2) PRIVATE BUSINESS CONTRIBUTION RE-
21 QUIREMENT. —

22 "(A) IN GENERAL.—For purposes of para-
23 graph (1), the private business contribution re-
24 quirement of this paragraph is met with respect
25 to any issue if the local educational agency that

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1 established the qualified zone academy has writ-
2 ten commitments from private entities to make
3 qualified contributions having a present value
4 (as of the date of issuance of the issue) of not
5 less than 10 percent of the proceeds of the
6 issue.

7 "(B) QUALIFIED CONTRIBUTIONS.—For
8 purposes of subparagraph (A), the term 'quali-
9 fied contribution' means any contribution (of a
10 type and quality acceptable to the local edu-
11 cational agency) of—

12 "(i) equipment for use in the qualified
13 zone academy (including state-of-the-art
14 technology and vocational equipment).

15 "(ii) technical assistance in developing
16 curriculum or in training teachers in order
17 to promote appropriate market driven tech-
18 nology in the classroom.

19 "(iii) services of employees as volun-
20 teer mentors.

21 "(iv) internships, field trips, or other
22 educational opportunities outside the acad-
23 emy for students, or

24 "(v) any other property or service
25 specified by the local educational agency.

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1 “(3) QUALIFIED ZONE ACADEMY.—The term
2 ‘qualified zone academy’ means any public school (or
3 academic program within a public school) which is
4 established by and operated under the supervision of
5 a local educational agency to provide education or
6 training below the postsecondary level if—

7 “(A) such public school or program (as the
8 case may be) is designed in cooperation with
9 business to enhance the academic curriculum,
10 increase graduation and employment rates, and
11 better prepare students for the rigors of college
12 and the increasingly complex workforce.

13 “(B) students in such public school or pro-
14 gram (as the case may be) will be subject to the
15 same academic standards and assessments as
16 other students educated by the local educational
17 agency.

18 “(C) the comprehensive education plan of
19 such public school or program is approved by
20 the local educational agency, and

21 “(D) (i) such public school is located in an
22 empowerment zone or enterprise community
23 (including any such zone or community des-
24 ignated after the date of the enactment of this
25 section), or

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1 “(II) there is a reasonable expectation (as
2 of the date of issuance of the bonds) that at
3 least 35 percent of the students attending such
4 school or participating in such program (as the
5 case may be) will be eligible for free or reduced-
6 cost lunches under the school lunch program es-
7 tablished under the National School Lunch Act.

8 “(4) QUALIFIED PURPOSE.—The term ‘quali-
9 fied purpose’ means, with respect to any qualified
10 zone academy—

11 “(A) constructing, rehabilitating, or repair-
12 ing the public school facility in which the acad-
13 emy is established,

14 “(B) acquiring the land on which such fa-
15 cility is to be constructed with part of the pro-
16 ceeds of such issue,

17 “(C) providing equipment for use at such
18 academy,

19 “(D) developing course materials for edu-
20 cation to be provided at such academy, and

21 “(E) training teachers and other school
22 personnel in such academy.

23 “(b) LIMITATIONS ON AMOUNT OF BONDS DES-
24 IGNATED.—

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1 “(1) IN GENERAL.—There is a national zone
2 academy bond limitation for each calendar year.
3 Such limitation is—

- 4 “(A) \$400,000,000 for 1998,
- 5 “(B) \$400,000,000 for 1999,
- 6 “(C) \$400,000,000 for 2000,
- 7 “(D) \$400,000,000 for 2001,
- 8 “(E) \$1,400,000,000 for 2002,
- 9 “(F) \$1,400,000,000 for 2003, and
- 10 “(G) except as provided in paragraph (3),
- 11 zero after 2003.

12 “(2) ALLOCATION OF LIMITATION.—

13 “(A) ALLOCATION AMONG STATES.—

14 “(i) 1998, 1999, 2000, AND 2001
15 LIMITATIONS.—The national zone academy
16 bond limitations for calendar years 1998,
17 1999, 2000, and 2001 shall be allocated by
18 the Secretary among the States on the
19 basis of their respective populations of in-
20 dividuals below the poverty line (as defined
21 by the Office of Management and Budget).

22 “(ii) LIMITATION AFTER 2003.—The
23 national zone academy bond limitation for
24 any calendar year after 2001 shall be allo-
25 cated by the Secretary among the States in

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1 proportion to the respective amounts each
2 such State received for Basic Grants under
3 subpart 2 of part A of title I of the Ele-
4 mentary and Secondary Education Act of
5 1965 (20 U.S.C. 6331 et seq.) for the
6 most recent fiscal year ending before such
7 calendar year.

8 "(B) ALLOCATION TO LOCAL EDU-
9 CATIONAL AGENCIES —The limitation amount
10 allocated to a State under subparagraph (A)
11 shall be allocated by the State to qualified zone
12 academies within such State

13 "(C) DESIGNATION SUBJECT TO LIMITA-
14 TION AMOUNT.—The maximum aggregate face
15 amount of bonds issued during any calendar
16 year which may be designated under subsection
17 (a) with respect to any qualified zone academy
18 shall not exceed the limitation amount allocated
19 to such academy under subparagraph (B) for
20 such calendar year.

21 "(3) CARRYOVER OF UNUSED LIMITATION.—If
22 for any calendar year—

23 "(A) the limitation amount under this sub-
24 section for any State, exceeds

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1 “(B) the amount of bonds issued during
2 such year which are designated under sub-
3 section (a) (or the corresponding provisions of
4 prior law) with respect to qualified zone acad-
5 emies within such State,

6 the limitation amount under this subsection of such
7 State for the following calendar year shall be in-
8 creased by the amount of such excess.”

9 (b) REPORTING. —Subsection (d) of section 1049 of
10 such Code (relating to returns regarding payments of in-
11 terest) is amended by adding at the end the following new
12 paragraph:

13 “(8) REPORTING OF CREDIT ON QUALIFIED
14 PUBLIC SCHOOL MODERNIZATION BONDS. —

15 “(A) IN GENERAL. —For purposes of sub-
16 section (a), the term ‘interest’ includes amounts
17 includible in gross income under section
18 1400K(f) and such amounts shall be treated as
19 paid on the credit allowance date (as defined in
20 section 1400K(d)(2)).

21 “(B) REPORTING TO CORPORATIONS,
22 ETC. —Except as otherwise provided in regula-
23 tions, in the case of any interest described in
24 subparagraph (A) of this paragraph, subsection
25 (b)(4) of this section shall be applied without

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1 regard to subparagraphs (A), (H), (I), (J), (K),
2 and (L)(i).

3 "(C) REGULATORY AUTHORITY. "The Sec-
4 retary may prescribe such regulations as are
5 necessary or appropriate to carry out the pur-
6 poses of this paragraph, including regulations
7 which require more frequent or more detailed
8 reporting."

9 (c) CONFORMING AMENDMENTS.

10 (1) Subchapter U of chapter 1 of such Code is
11 amended by striking part IV, by redesignating part
12 V as part IV, and by redesignating section 1397F
13 as section 1397E.

14 (2) The table of subchapters for chapter 1 of
15 such Code is amended by adding at the end the fol-
16 lowing new item:

"Subchapter Y. Public school modernization provisions.

17 (3) The table of parts of subchapter U of chap-
18 ter 1 of such Code is amended by striking the last
19 2 items and inserting the following item.

"Part IV. Regulations."

20 (e) EFFECTIVE DATES.--

21 (1) IN GENERAL -- Except as otherwise pro-
22 vided in this subsection, the amendments made by
23 this section shall apply to obligations issued after
24 December 31, 2001.

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1 (2) REPEAL OF RESTRICTION ON ZONE ACADEMY BOND HOLDERS.—In the case of bonds to
2 which section 1397E of the Internal Revenue Code
3 of 1986 (as in effect before the date of the enact-
4 ment of this Act) applies, the limitation of such sec-
5 tion to eligible taxpayers (as defined in subsection
6 (d)(6) of such section) shall not apply after the date
7 of the enactment of this Act.

9 **SEC. 3. APPLICATION OF CERTAIN LABOR STANDARDS ON**
10 **CONSTRUCTION PROJECTS FINANCED**
11 **UNDER PUBLIC SCHOOL MODERNIZATION**
12 **PROGRAM.**

13 Section 439 of the General Education Provisions Act
14 (relating to labor standards) is amended—

15 (1) by inserting “(a)” before “All laborers and
16 mechanics”, and

17 (2) by adding at the end the following:

18 “(b)(1) For purposes of this section, the term ‘applicable program’ also includes the qualified zone academy
19 bond provisions enacted by section 226 of the Taxpayer
20 Relief Act of 1997 and the program established by section
21 2 of the America’s Better Classroom Act of 2001

22 “(2) A State or local government participating in a
23 program described in paragraph (1) shall—
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1 “(A) in the awarding of contracts, give priority
2 to contractors with substantial numbers of employ-
3 ees residing in the local education area to be served
4 by the school being constructed; and

5 “(B) include in the construction contract for
6 such school a requirement that the contractor give
7 priority in hiring new workers to individuals residing
8 in such local education area.

9 “(3) In the case of a program described in paragraph
10 (1), nothing in this subsection or subsection (a) shall be
11 construed to deny any tax credit allowed under such pro-
12 gram. If amounts are required to be withheld from con-
13 tractors to pay wages to which workers are entitled, such
14 amounts shall be treated as expended for construction pur-
15 poses in determining whether the requirements of such
16 program are met.”

17 **SEC. 4. EMPLOYMENT AND TRAINING ACTIVITIES RELAT-**
18 **ING TO CONSTRUCTION OR RECONSTRUC-**
19 **TION OF PUBLIC SCHOOL FACILITIES.**

20 (a) IN GENERAL.— Section 134 of the Workforce In-
21 vestment Act of 1998 (29 U.S.C. 2864) is amended by
22 adding at the end the following:

23 “(f) LOCAL EMPLOYMENT AND TRAINING /ACTIVI-
24 TIES RELATING TO CONSTRUCTION OR RECONSTRUCTION
25 OF PUBLIC SCHOOL FACILITIES.—

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1 “(1) IN GENERAL -In order to provide training
2 services related to construction or reconstruction of
3 public school facilities receiving funding assistance
4 under an applicable program, each State shall estab-
5 lish a specialized program of training meeting the
6 following requirements:

7 “(A) The specialized program provides
8 training for jobs in the construction industry

9 “(B) The program provides trained work-
10 ers for projects for the construction or recon-
11 struction of public school facilities receiving
12 funding assistance under an applicable pro-
13 gram.

14 “(C) The program ensures that skilled
15 workers (residing in the area to be served by
16 the school facilities) will be available for the
17 construction or reconstruction work.

18 “(2) COORDINATION. -The specialized program
19 established under paragraph (1) shall be integrated
20 with other activities under this Act, with the activi-
21 ties carried out under the National Apprenticeship
22 Act of 1937 by the State Apprenticeship Council or
23 through the Bureau of Apprenticeship and Training
24 in the Department of Labor, as appropriate, and
25 with activities carried out under the Carl D. Perkins

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1 Vocational and Technical Education Act of 1998.
2 Nothing in this subsection shall be construed to re-
3 quire services duplicative of those referred to in the
4 preceding sentence.

5 "(3) APPLICABLE PROGRAM.—In this sub-
6 section, the term 'applicable program' has the mean-
7 ing given the term in section 439(b) of the General
8 Education Provisions Act (relating to labor stand-
9 ards) "

10 (b) STATE PLAN — Section 112(b)(17)(A) of the
11 Workforce Investment Act of 1998 (29 U.S.C.
12 2822(b)(17)(A)) is amended—

13 (1) in clause (iii), by striking "and" at the end;

14 (2) by redesignating clause (iv) as clause (v).

15 and

16 (3) by inserting after clause (iii) the following:

17 "(iv) how the State will establish and
18 carry out a specialized program of training
19 under section 134(f); and".

S 243 IS

107th CONGRESS

1st Session

S. 243

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 1, 2001

Mr. JOHNSON (for himself, Mr. BINGAMAN, Mr. DASCHLE, Mr. INOUE, Mr. COCHRAN, Mr. BAUCUS, Mr. REID, Mr. AKAKA, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Indian School Construction Act'.

SEC. 2. INDIAN SCHOOL CONSTRUCTION.

(a) DEFINITIONS- In this section:

- (1) BUREAU- The term 'Bureau' means the Bureau of Indian Affairs of the Department of the Interior.
- (2) INDIAN- The term 'Indian' means any individual who is a member of a tribe.
- (3) SECRETARY- The term 'Secretary' means the Secretary of the Interior.
- (4) TRIBAL SCHOOL- The term 'tribal school' means an elementary school, secondary school, or dormitory that is operated by a tribal organization or the Bureau for the education of Indian children and that receives financial assistance for its operation under an appropriation for the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(a), and 458d) or under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) under a contract, a grant, or an agreement, or for a Bureau-operated school.
- (5) TRIBE- The term 'tribe' has the meaning given the term 'Indian tribal government' by section 7701(a)(40) of the Internal Revenue Code of 1986, including the application of section 7871(d) of such Code. Such term includes any consortium of tribes approved by the Secretary.

(b) ISSUANCE OF BONDS-

(1) IN GENERAL- The Secretary shall establish a pilot program under which eligible tribes have the authority to issue qualified tribal school modernization bonds to provide funding for the construction, rehabilitation, or repair of tribal schools, including the advance planning and design thereof.

(2) ELIGIBILITY-

(A) IN GENERAL- To be eligible to issue any qualified tribal school modernization bond under the program under paragraph (1), a tribe shall--

- (i) prepare and submit to the Secretary a plan of construction that meets the requirements of subparagraph (B);
- (ii) provide for quarterly and final inspection of the project by the Bureau; and
- (iii) pledge that the facilities financed by such bond will be used primarily for elementary and secondary educational purposes for not less than the period such bond remains outstanding.

(B) PLAN OF CONSTRUCTION- A plan of construction meets the requirements of this subparagraph if such plan--

- (i) contains a description of the construction to be undertaken with funding provided under a qualified tribal school modernization bond;
- (ii) demonstrates that a comprehensive survey has been undertaken concerning the construction needs of the tribal school involved;
- (iii) contains assurances that funding under the bond will be used only for the activities described in the plan;
- (iv) contains response to the evaluation criteria contained in Instructions and Application for Replacement School Construction, Revision 6, dated February 6, 1999; and
- (v) contains any other reasonable and related information determined appropriate by the Secretary.

(C) PRIORITY- In determining whether a tribe is eligible to participate in the program under this subsection, the Secretary shall give priority to tribes that, as demonstrated by the relevant plans of construction, will fund projects--

- (i) described in the Education Facilities Replacement Construction Priorities List as of FY 2000 of the Bureau of Indian Affairs (65 Fed. Reg. 4623-4624);
- (ii) described in any subsequent priorities list published in the Federal Register; or
- (iii) which meet the criteria for ranking schools as described in Instructions and Application for Replacement School Construction, Revision 6, dated February 6, 1999.

(D) ADVANCE PLANNING AND DESIGN FUNDING- A tribe may propose in its plan of construction to receive advance planning and design funding from the tribal school modernization escrow account established under paragraph (6)(B). Before advance planning and design funds are allocated from the escrow account, the tribe

shall agree to issue qualified tribal school modernization bonds after the receipt of such funds and agree as a condition of each bond issuance that the tribe will deposit into such account or a fund managed by the trustee as described in paragraph (4)(C) an

amount equal to the amount of such funds received from the escrow account.

(3) **PERMISSIBLE ACTIVITIES-** In addition to the use of funds permitted under paragraph (1), a tribe may use amounts received through the issuance of a qualified tribal school modernization bond to--

(A) enter into and make payments under contracts with licensed and bonded architects, engineers, and construction firms in order to determine the needs of the tribal school and for the design and engineering of the school;

(B) enter into and make payments under contracts with financial advisors, underwriters, attorneys, trustees, and other professionals who would be able to provide assistance to the tribe in issuing bonds; and

(C) carry out other activities determined appropriate by the Secretary.

(4) **BOND TRUSTEE-**

(A) **IN GENERAL-** Notwithstanding any other provision of law, any qualified tribal school modernization bond issued by a tribe under this subsection shall be subject to a trust agreement between the tribe and a trustee.

(B) **TRUSTEE-** Any bank or trust company that meets requirements established by the Secretary may be designated as a trustee under subparagraph (A).

(C) **CONTENT OF TRUST AGREEMENT-** A trust agreement entered into by a tribe under this paragraph shall specify that the trustee, with respect to any bond issued under this subsection shall--

(i) act as a repository for the proceeds of the bond;

(ii) make payments to bondholders;

(iii) receive, as a condition to the issuance of such bond, a transfer of funds from the tribal school modernization escrow account established under paragraph (6)(B) or from other funds furnished by or on behalf of the tribe in an amount, which together with interest earnings from the investment of such funds in obligations of or fully guaranteed by the United States or from other investments authorized by paragraph (10), will produce moneys sufficient to timely pay in full the entire principal amount of such bond on the stated maturity date therefor;

(iv) invest the funds received pursuant to clause (iii) as provided by such clause; and

(v) hold and invest the funds in a segregated fund or account under the agreement, which fund or account shall be applied solely to the payment of the costs of items described in paragraph (3).

(D) **REQUIREMENTS FOR MAKING DIRECT PAYMENTS-**

(i) **IN GENERAL-** Notwithstanding any other provision of law, the trustee shall make any payment referred to in subparagraph (C)(v) in accordance with

requirements that the tribe shall prescribe in the trust agreement entered into under subparagraph (C). Before making a payment to a contractor under subparagraph (C)(v), the trustee shall require an inspection of the project by a local financial institution or an independent inspecting architect or engineer, to ensure the completion of the project.

(ii) **CONTRACTS-** Each contract referred to in paragraph (3) shall specify, or be renegotiated to specify, that payments under the contract shall be made in accordance with this paragraph.

(5) PAYMENTS OF PRINCIPAL AND INTEREST-

(A) **PRINCIPAL-** No principal payments on any qualified tribal school modernization bond shall be required until the final, stated maturity of such bond, which stated maturity shall be within 15 years from the date of issuance. Upon the expiration of such period, the entire outstanding principal under the bond shall become due and payable.

(B) **INTEREST-** In lieu of interest on a qualified tribal school modernization bond there shall be awarded a tax credit under section 1400K of the Internal Revenue Code of 1986.

(6) BOND GUARANTEES-

(A) **IN GENERAL-** Payment of the principal portion of a qualified tribal school modernization bond issued under this subsection shall be guaranteed solely by amounts deposited with each respective bond trustee as described in paragraph (4)(C)(iii).

(B) ESTABLISHMENT OF ACCOUNT-

(i) **IN GENERAL-** Notwithstanding any other provision of law, beginning in fiscal year 2002, from amounts made available for school replacement under the construction account of the Bureau, the Secretary is authorized to deposit not more than \$30,000,000 each fiscal year into a tribal school modernization escrow account.

(ii) **PAYMENTS-** The Secretary shall use any amounts deposited in the escrow account under clauses (i) and (iii) to make payments to trustees appointed and acting pursuant to paragraph (4) or to make payments described in paragraph (2)(D).

(iii) **TRANSFERS OF EXCESS PROCEEDS-** Excess proceeds held under any trust agreement that are not needed for any of the purposes described in clauses (iii) and (v) of paragraph (4)(C) shall be transferred, from time to time, by the trustee for deposit into the tribal school modernization escrow account.

(7) LIMITATIONS-

(A) **OBLIGATION TO REPAY-** Notwithstanding any other provision of law, the principal amount on any qualified tribal school modernization bond issued under this subsection shall be repaid only to the extent of any escrowed funds furnished under paragraph (4)(C)(iii). No qualified tribal school modernization bond issued by a tribe shall be an obligation of, nor shall payment of the principal thereof be guaranteed by, the United States, the tribes, nor their schools.

(B) **LAND AND FACILITIES-** Any land or facilities purchased or improved with amounts derived from qualified tribal school modernization bonds issued under this

subsection shall not be mortgaged or used as collateral for such bonds.

(8) **SALE OF BONDS-** Qualified tribal school modernization bonds may be sold at a purchase price equal to, in excess of, or at a discount from the par amount thereof.

(9) **TREATMENT OF TRUST AGREEMENT EARNINGS-** Any amounts earned through the investment of funds under the control of a trustee under any trust agreement described in paragraph (4) shall not be subject to Federal income tax.

(10) **INVESTMENT OF SINKING FUNDS-** Any sinking fund established for the purpose of the payment of principal on a qualified tribal school modernization bond shall be invested in obligations issued by or guaranteed by the United States or in such other assets as the Secretary of the Treasury may by regulation allow.

(c) **EXPANSION OF INCENTIVES FOR TRIBAL SCHOOLS-** Chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

Subchapter XI--Tribal School Modernization Provisions

Sec. 1400K. Credit to holders of qualified tribal school modernization bonds.

SEC. 1400K. CREDIT TO HOLDERS OF QUALIFIED TRIBAL SCHOOL MODERNIZATION BONDS.

(a) **ALLOWANCE OF CREDIT-** In the case of a taxpayer who holds a qualified tribal school modernization bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

(b) **AMOUNT OF CREDIT-**

(1) **IN GENERAL-** The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tribal school modernization bond is 25 percent of the annual credit determined with respect to such bond.

(2) **ANNUAL CREDIT-** The annual credit determined with respect to any qualified tribal school modernization bond is the product of--

(A) the applicable credit rate, multiplied by

(B) the outstanding face amount of the bond.

(3) **APPLICABLE CREDIT RATE-** For purposes of paragraph (1), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the date of sale of the issue) on outstanding long-term corporate obligations (as determined by the Secretary).

(4) **SPECIAL RULE FOR ISSUANCE AND REDEMPTION-** In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

(c) **LIMITATION BASED ON AMOUNT OF TAX-**

(1) IN GENERAL- The credit allowed under subsection (a) for any taxable year shall not exceed the excess of--

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits).

(2) CARRYOVER OF UNUSED CREDIT- If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND; OTHER DEFINITIONS- For purposes of this section--

(1) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND-

(A) IN GENERAL- The term 'qualified tribal school modernization bond' means, subject to subparagraph (B), any bond issued as part of an issue under section 2(c) of the Indian School Construction Act, as in effect on the date of the enactment of this section, if--

(i) 95 percent or more of the proceeds of such issue are to be used for the construction, rehabilitation, or repair of a school facility funded by the Bureau of Indian Affairs of the Department of the Interior or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

(ii) the bond is issued by a tribe,

(iii) the issuer designates such bond for purposes of this section, and

(iv) the term of each bond which is part of such issue does not exceed 15 years.

(B) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED-

(i) NATIONAL LIMITATION- There is a national qualified tribal school modernization bond limitation for each calendar year. Such limitation is--

(I) \$200,000,000 for 2002,

(II) \$200,000,000 for 2003, and

(III) zero after 2004.

(ii) ALLOCATION OF LIMITATION- The national qualified tribal school modernization bond limitation shall be allocated to tribes by the Secretary of the Interior subject to the provisions of section 2 of the Indian School Construction Act, as in effect on the date of the enactment of this section.

(iii) DESIGNATION SUBJECT TO LIMITATION AMOUNT- The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with respect to any tribe shall not exceed the limitation amount allocated to such government under clause (ii) for such calendar year.

(iv) CARRYOVER OF UNUSED LIMITATION- If for any calendar year--

(I) the limitation amount under this subparagraph, exceeds

(II) the amount of qualified tribal school modernization bonds issued during such year,

the limitation amount under this subparagraph for the following calendar year shall be increased by the amount of such excess. The preceding sentence shall not apply if such following calendar year is after 2010.

(2) CREDIT ALLOWANCE DATE- The term 'credit allowance date' means--

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term includes the last day on which the bond is outstanding.

(3) BOND- The term 'bond' includes any obligation.

(4) TRIBE- The term 'tribe' has the meaning given the term 'Indian tribal government' by section 7701(a)(40), including the application of section 7871(d). Such term includes any consortium of tribes approved by the Secretary of the Interior.

(e) CREDIT INCLUDED IN GROSS INCOME- Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

(f) BONDS HELD BY REGULATED INVESTMENT COMPANIES- If any qualified tribal school modernization bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

(g) CREDITS MAY BE STRIPPED- Under regulations prescribed by the Secretary--

(1) IN GENERAL- There may be a separation (including at issuance) of the ownership of a qualified tribal school modernization bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

(2) CERTAIN RULES TO APPLY- In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tribal school modernization bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

(h) TREATMENT FOR ESTIMATED TAX PURPOSES- Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified tribal school modernization bonds on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

(i) CREDIT MAY BE TRANSFERRED- Nothing in any law or rule of law shall be construed to limit the transferability of the credit allowed by this section through sale and repurchase

Torricelli-Lott Amendment to the Affordable Education Act of 2001

This amendment renames Education Individual Retirement Savings Accounts "Coverdell Education Savings Accounts" and allows tax-free expenditures for elementary and secondary school expenses. It also ensures that contributions made by third parties are tax-exempt to the contributor.

1. The amendment renames Education IRAs "Coverdell Education Savings Accounts" in all statutes referring to the Accounts.
2. Currently, ESAs may only be used tax-free for higher education expenses. The amendment expands the usage of ESAs to include elementary and secondary school expenses.
 - Elementary and secondary expenses include tuition, fees, academic tutoring, special needs services, books, supplies, computer equipment (including related software and services), and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school student at a public, private or religious schools, as well as expenses for room and board, uniforms, transportation, and supplementary items and services (including extended day programs) which are required or provided by a public, private or religious school in connection with such enrollment or attendance.
 - "School" includes any school which provides elementary education or secondary education (kindergarten through grade 12) as determined under State law
3. The amendment clarifies that the contributions made by third parties are tax-exempt to the contributor.

Torricelli Amendment to the Affordable Education Act of 2001

This amendment raises the income phase-out of the HOPE credit from \$40,000 to \$50,000 for singles (\$80,000 to \$100,00 for couples) to \$50,000 to \$60,000 for singles and \$100,000 to \$120,000 for couples.

Currently, the income phase-out on the HOPE tax credit is \$40,000 to \$50,000 for singles and \$80,000 to \$100,000 for couples.

This amendment would raise the phase-out ranges to \$50,000 to 60,000 for singles and \$100,000 to \$120,000 for couples (these numbers are subject to change based on the revenue estimates from the Joint Tax Committee).

Torricelli Amendment to the Affordable Education Act of 2001

18

This amendment would make college tuition tax deductible in conjunction with the HOPE credit, provide families a choice between the a deduction and the Lifetime Learning credit, and allow a deduction on tuition for families who are ineligible for either the HOPE or Lifetime Learning credits.

Currently, taxpayers can claim the HOPE Scholarship or Lifetime Learning tax credit on higher education expenses, but they cannot deduct college tuition from their taxes (unless it meets a narrow definition as work-related).

This amendment would make college tuition deductible, in conjunction with existing tax benefits for higher education. Under current law, a family can claim the HOPE Scholarship tax credit (100% on the first \$1,000 in tuition and 50% of the second \$1,000). The amendment would further allow a family to deduct up to the next \$8,000 in tuition expenses not covered by the credit.

A family would be capped at deducting a total of \$15,000 in tuition expenses in one year if they have more than one child in college. In addition, if a family was ineligible for the Hope Scholarship (due to its income limitations), they would be able to deduct \$5,000 of tuition costs.

Under current law, a family can also take the Lifetime Learning tax credit (a 20% credit on up to \$5,000 of tuition) in years in which a Hope Scholarship is not used. The amendment would increase in the Lifetime Learning credit to 20% on \$10,000 of tuition and provide families with the choice of taking either the Lifetime Learning Tax credit *or* a deduction on up to \$10,000 of tuition, (\$5,000 if a family earns more than \$120,000 a year).

Torricelli-Hatch Amendment to the Affordable Education Act of 2001

This amendment fixes the marriage penalty in the income phase-out range for the Education Savings Accounts.

Currently, the income phase-out on the Education Savings Account is \$95,000 to \$110,000 for singles and \$150,000 to \$160,000 for couples (joint filers).

This amendment raises the phase-out range for couples to \$190,000 to \$220,000 for couples, and fixes the marriage penalty for any amended income phase-out ranges to the income limits