

[COMMITTEE PRINT]

DESCRIPTION OF H.R. 11776
AND OTHER PROPOSALS

RELATING TO
TUTION TAX CREDITS

PREPARED FOR THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



APRIL 7, 1978

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1978

JCS-15-78

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I. INTRODUCTION

This pamphlet has been prepared by the staff of the Joint Committee on Taxation for use by the Committee on Ways and Means during its consideration of tuition tax credits on April 10 and 11, 1978. The Committee on Ways and Means announced on March 24, 1978, that H.R. 11776 will be the subject of its two-day mark-up. The Committee on Ways and Means held hearings on proposals relating to tax credits, tax deductions, tax deferrals, and other methods for providing assistance for educational expenses on February 14, 15, 16, 17, and 21, 1978.

This pamphlet provides background information on tuition tax credits and related educational assistance proposals, a technical explanation of H.R. 11776, a summary of other legislative proposals, and an outline of the issues involved in such legislation.

II. BACKGROUND

A. Present Law

1. Tax benefits

Present law provides no tax credit, deduction, nor other tax benefit for personal educational expenses.

In certain cases, taxpayers are entitled to a personal exemption for a dependent, which they otherwise could not claim, because the dependent is a student. Generally, a taxpayer may claim a \$750 personal exemption deduction (and a \$35 credit) for each dependent whose gross income is less than \$750 for the taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and is under the age of 19 or is a student (sec. 151).

Individuals generally may exclude from income amounts received as scholarships and fellowships (sec. 117).¹ The exclusion also covers incidental amounts received to cover expenses for travel, research, clerical help, and equipment when they are expended for these purposes. The exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration (e.g., promises of future services) from the recipient.²

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

2. Direct aid

a. Post-secondary education

Under present law, direct Federal assistance to individuals for post-secondary educational expenses is provided through a variety of programs, the majority of which are administered through the

¹To some extent, qualifications differ for individuals who are candidates for degrees and individuals who are not degree candidates. A degree candidate cannot exclude any amount to the extent it represents compensation for teaching, research, or other part-time services which he or she is required to render in order to obtain the grant unless such services are required of all candidates for a particular degree as a condition for receiving the degree.

In the case of a nondegree candidate, the exclusion is available only for up to \$300 per month for no more than 36 months and then only if the grantor of the scholarship is a qualified governmental unit, charity, or international organization.

²*Bingler v. Johnson*, 394 U.S. 741 (1969).

Department of Health, Education, and Welfare (HEW). The principal programs administered by HEW are the Basic Educational Opportunity Grant Program (BEOG), the College Work Study Program, the Guaranteed Student Loan Program, the National Direct Student Loan Program, the State Student Incentive Grant Program (SSIG), and the Supplemental Educational Opportunity Grant Program (SEOG). In addition, the Federal Government provides individuals with educational assistance through G.I. Bill education benefits and Social Security student benefits.

The Basic Educational Opportunity Grant Program provides Federal assistance to students on the basis of family income and the cost of college attendance. In fiscal year 1978, \$2.1 billion was appropriated for this program. According to HEW, grants presently are provided to 2.4 million students. The maximum grant for low-income students is \$1,600, and the average grant to students in families with incomes between \$8,000 and \$16,000 is \$850. Students from families with incomes in excess of \$16,000 do not qualify for grants.

The College Work Study Program provides 80 percent of the salaries for certain part-time jobs for students. In fiscal year 1978, \$435 million was appropriated for this program. About 796,000 students will participate in it.

The Guaranteed Student Loan Program subsidizes interest costs and guarantees loan repayments. In fiscal year 1978, \$530 million was appropriated for this program. Under present law, students from families with adjusted family incomes in excess of \$25,000 are not eligible to receive interest subsidies but are eligible to participate in this program. The Administration has estimated that more than one million students will receive loans in fiscal year 1978 (with about 350,000 loans going to students in families with incomes above \$16,000).

The National Direct Student Loan Program was budgeted at approximately \$310 million for fiscal year 1978. Repayments on outstanding loans help fund current benefits. The Administration estimates that in fiscal year 1979 approximately 853,000 loans will be made.

The State Student Incentive Grant Program provides scholarships to needy students through matching State and Federal grants. Approximately \$64 million of Federal funds have been appropriated to be expended to assist about 250,000 students during the 1978-1979 school year.

The Supplemental Educational Opportunity Grant Program helps make available the benefits of post-secondary education to students who are in exceptional financial need and who would be unable to obtain post-secondary education without such grants. It authorizes the appropriation of \$200 million in each of the fiscal years 1977, 1978 and 1979, for initial supplemental grants (i.e., grants to students who have not received such grants previously), and such sums as necessary, to be appropriated separately, for continuing supplemental grants. No annual grant may exceed \$1,500 or one-half the sum of the total amount of student financial aid provided to the recipient student by the institution, whichever is less. An eligible student may receive up to \$4,000 in grants over a period of up to four years. (In some cases, the student may receive up to \$5,000 over a period of up to five years.)

A breakdown of the sources of support for the college costs of freshmen entering college in 1975 according to both sources of support and parental income level appears in Table 1, below:

TABLE 1.—PERCENTAGE OF TOTAL COLLEGE COSTS OF 1975 FRESHMEN PAID FROM VARIOUS SOURCES, BY INCOME LEVEL

Source	Parental income level			All students
	Low (<\$8,000)	Middle (\$8,000 to \$19,999)	High (\$20,000 or more)	
Basic educational opportunity grant (BEOG).....	27.0	7.3	1.5	8.3
Supplemental educational opportunity grant (SEOG).....	3.2	1.1	.2	1.1
State scholarship.....	5.9	4.7	1.4	3.7
Local, private scholarship.....	4.0	4.5	2.6	3.8
Students' GI benefits.....	1.9	1.0	.4	.9
Parents' GI benefits.....	1.0	.6	.3	.5
SS dependents' benefits.....	5.4	1.8	.7	1.9
Total, grants.....	48.4	21.0	7.1	20.2
Parents or family.....	18.6	36.8	62.9	43.1
Spouse.....	.7	.4	.3	.4
Total, family assistance.....	19.3	37.2	63.2	43.5
Total, grants and family assistance.....	67.7	58.2	70.3	63.7
College work study.....	4.3	2.3	.6	2.0
Federal guaranteed student loan.....	2.6	3.6	1.8	2.8
National direct student loan.....	3.0	2.6	.7	2.0
Other loan.....	1.3	2.0	1.3	1.6
Full-time work.....	2.0	2.5	1.8	2.2
Part-time work.....	10.0	15.5	12.2	13.5
Savings.....	7.0	11.2	9.4	9.9
Other financing.....	2.0	1.9	1.8	1.9
Student net cost.....	32.2	41.6	29.6	35.9
Grant total.....	99.9	99.8	99.9	99.6

Note: Totals do not equal 100 percent due to rounding.

Source: Unpublished analyses conducted by the Higher Education Research Institute based on data from the national survey of freshmen entering college in 1975 as reported in Astin, A. W.; King, M. R.; and Richardson, G. T. "The American Freshman," Los Angeles: Laboratory for Research in Higher Education, University of California, Los Angeles, 1975.

b. Elementary and secondary education

Under present law, Federal assistance is provided to elementary and secondary education through a variety of programs administered by HEW. These programs include the Elementary and Secondary Education Act of 1965 (ESEA), Impact Aid, the Adult Education Act, and the Emergency School Aid Act (ESAA).

ESEA.—Title I of ESEA provides funds on a formula basis to school districts for supplemental compensatory services to educationally deprived children in schools with high concentrations of children from low-income families. At present, the basic Title I program serves about 5.6 million of the 9 million eligible children, 80 percent of whom are in grades 1 to 6. Title I compensatory education programs are conducted in 14,000 of the nation's 16,000 local school districts.

The National Reading Improvement Program funds such projects as demonstration programs to improve reading skills. Present law does not contain authority for broad-based basic skills achievements programs.

The Special Projects Act authorizes special projects specifically including arts education, career education, community schools, consum-

ers' education, education of gifted and talented children, metric education, and women's educational equity. The proportion of total funding for the Special Projects Act to be devoted to each of these activities is set by law.

Title IV of ESEA provides grants to States for three primary purposes: (1) appropriations are dispersed by the State to local educational agencies for purchasing books, materials and equipment, and for training and other activities for guidance counselors; (2) funds are provided for strengthening the leadership resources of the State education agency; and (3) funds are provided for discretionary competitive grants from the State to local agencies for innovative educational projects.

Title VII of ESEA (Bilingual Education) has the following objectives: (1) to encourage the establishment and operation of programs using bilingual education practices, techniques, and methods; (2) to develop and disseminate effective models of bilingual education; (3) to establish training programs for teachers to teach in a bilingual setting; and (4) to conduct studies to determine the effectiveness of bilingual education, establish a national clearinghouse, and survey the number of children and adults with limited English speaking proficiency.

Impact Aid.—The Impact Aid program was enacted by Congress in 1950 to compensate school districts affected by Federal activities in the area. The two Impact Aid laws provide funds for a school district's ongoing maintenance and operation costs (P.L. 81-874) and to cover construction costs (P.L. 81-815). Both laws provide assistance for disasters (fires, hurricanes, floods, etc.). Currently, school districts whose student population has at least 3 percent or 400 "Federally-connected children" enrolled are eligible for impact aid.

Adult Education Act of 1966.—The Adult Education Act of 1966 authorizes grants to States for individuals 16 years and older to help with English language difficulties and reading, writing, and computational skills. Currently, the Adult Education program focuses on attainment of a high school education or its equivalent. Providers at the local level can be only public and private non-profit organizations.

Emergency School Aid Act.—The Emergency School Aid Act provides financial aid for desegregating school districts to conduct programs meeting the "special needs incident to" desegregation. Additionally, ESAA is intended to encourage voluntary reduction of minority group isolation and to aid school children in overcoming the educational disadvantages of minority group isolation.

B. Prior Congressional Action on Tuition Tax Benefits

In the 1950's, tax deductions from adjusted gross income for some portion of college expenses and an additional personal exemption for each student were the most common legislative proposals for tax relief for educational expenses. In the 1960's, tax credit proposals became popular. From 1967 to 1977, six education tax credit proposals passed the Senate, but none was ever approved by the House of Representatives.

The Social Security Financing Amendments of 1977, as passed by the Senate, contained an amendment, known as the "Roth amendment," to provide a tax credit for certain educational expenses. This amendment was deleted from the bill by the conferees.

The 1977 amendment would have allowed a tax credit for educational expenses paid by an individual for himself, his spouse, or his dependents. The credit would have covered 100 percent of the eligible educational expenses at institutions of higher education (but not graduate schools) or postsecondary vocational schools up to a maximum of \$250 for any one individual.

If more than one taxpayer paid the educational expenses of an individual, the credit with respect to that individual was to be prorated among such taxpayers.

Educational expenses of a taxpayer's spouse could be claimed only if the taxpayer was entitled to an exemption for his or her spouse under section 151(b) or if they filed a joint return. The credit would be allowed only with respect to full-time students. Expenses taken into account in determining a credit were to be reduced by scholarship or fellowship grants excluded from income under section 117 and by educational assistance allowances and educational and training allowances received under chapters 35 and 33 (relating to Veterans' benefits), respectively, of title 38 of the United States Code. Eligible expenses were tuition, fees, books, supplies, and equipment, but not meals, lodging, or similar personal, living, or family expenses. Higher education expenses had to be for courses allowed as credit toward a baccalaureate degree. Vocational school expenses had to be for courses allowed as credit for a certificate of required course work. No trade or business expense deduction under section 162 would be allowed for expenses taken into account in determining the credit.

The amendment, which was to be refundable only for the first year in which it was effective, would have applied to educational expenses paid after December 31, 1977, in taxable years beginning after December 31, 1977. It would have entailed a revenue loss of approximately \$1.3 billion in its first full nonrefundable fiscal year.

C. Administration Proposal

1. Summary and legislative history

The Administration has proposed legislative programs both for post-secondary and for elementary and secondary education. The Administration opposes the enactment of any tuition tax credit.

Post-secondary education.—The Administration announced on February 8, 1978, a proposal that would assist individuals with post-secondary educational expenses by expanding eligibility for, and increasing the benefits provided by, three Federal programs for direct student aid: the Basic Educational Opportunity Grant Program, the College Work Study Program, and the Guaranteed Student Loan Program. The total additional appropriation which the Administration has requested for fiscal year 1979 for its package of grants, work study, and loans is \$1.46 billion (an increase from about \$3.8 billion in fiscal year 1978 to about \$5.2 billion in fiscal year 1979).

H.R. 11274 (the Middle Income Student Assistance Act), as reported by the House Education and Labor Committee on March 8, 1978, provides for changes and/or increased funding in five student aid programs: the Basic Educational Opportunity Grant Program, the College Work Study Program, the Guaranteed Student Loan Program, the Supplemental Educational Opportunity Grant Program, and the State Student Incentive Grant Program. HEW estimates that H.R. 11274 would cost about \$300 million, assuming full funding (or between \$34 and \$40 million at the permissible lower funding level), over the Administration's total fiscal year 1979 request. On March 20, 1978, the House defeated, by a vote of 156-218, a motion to suspend the rules in order to consider H.R. 11274.

S. 2539 (The College Opportunity Act of 1978), as reported by the Senate Human Resources Committee on February 28, 1978, provides for changes and/or increased funding in five student aid programs: the Basic Educational Opportunity Grant Program, the College Work Study Program, the Guaranteed Student Loan Program, the Supplemental Educational Opportunity Grant Program, and the State Student Incentive Grant Program. HEW estimates that these changes would cost about \$150 million over its total fiscal year 1979 request.

Elementary and secondary education.—The Administration's proposal for aid to elementary and secondary education, announced on February 28, 1978, represents an increase of nearly \$900 million in fiscal year 1979 over fiscal year 1978 (from \$6 billion to \$6.9 billion). The proposal, which was introduced in the House as H.R. 11282, on March 3, 1978, primarily is concerned with reauthorizing and improving a number of existing HEW programs dealing with elementary and secondary education. Specifically, H.R. 11282 would amend titles I, II, III, IV, and VII of the Elementary and Secondary Education Act, Impact Aid, the Emergency School Aid Act, and the Adult Education Act. Also, the bill would authorize the Woman's Educational Equity

Act as a separate program and would establish a new discretionary authority to coordinate and consolidate demonstration projects for improving basic educational skills (The Basic Skills and Educational Quality Act).

2. *Comparison of Administration proposal for post-secondary education with House (H.R. 11274) and Senate (S. 2539) bills*

Basic Educational Opportunity Grant Program

This program provides Federal assistance to students on the basis of family income and the cost of college attendance. For fiscal year 1979, the Administration requested an additional \$1 billion over the \$2.1 billion appropriated for this program for fiscal year 1978. With this additional funding, the Administration intends to (1) provide grants to 2.8 million additional students (raising the total from 2.4 to 5.2 million); (2) guarantee a \$250 grant to 2.7 million students from families with annual incomes of up to \$25,000 (including assistance to at least 2 million students from families with annual incomes in the \$16,000 to \$25,000 range who had not previously participated in this program); (3) increase the maximum grant for low-income students from \$1,600 to \$1,800; (4) increase the amount of the average grant by \$200 (from \$850 to \$1,050) to students in families with incomes between \$8,000 and \$16,000; and (5) eliminate inequities in the treatment of self-supporting students, particularly those with dependents.

The House bill changes the method of calculating the amount which a family is expected to contribute to a child's education. Families would be expected to contribute only 10.5 percent of their "discretionary income" for their children's education if the program is fully funded, and 12 percent if the program is not fully funded. (Currently, families are expected to contribute 20 percent of their first \$5,000, and 30 percent of additional, discretionary income for their children's education.) More liberal treatment would be provided for self-supporting students, and the neediest students would be provided with increased protection against having their grants reduced if the program is not fully funded. HEW estimates that this would cost about \$290 million at full funding (and \$28 million at the lower funding level) more than the Administration's total fiscal year 1979 request.

The Senate bill changes the method of calculating what a family is expected to contribute to their child's education. Families would be expected to contribute only 10.5 percent of their discretionary income for this purpose. HEW estimates that this portion of the bill would cost about \$157 million more than the Administration's total fiscal year 1979 request.

College Work Study Program

This program provides 80 percent of the salaries for certain part-time jobs for students. The Administration seeks an additional \$165 million over the \$435 million appropriated for this program in fiscal year 1978. With this additional appropriation, the Administration intends to provide work opportunities for as many as 280,000 more students (increasing the program total to more than one million students). The Administration estimates that approximately 380,000 of the students eligible for benefits would be from families with incomes above \$16,000.

Under the House bill, the minimum funding threshold of the College Work Study program would be increased to \$520 million in fiscal year 1979 and to \$600 million in fiscal year 1980. HEW estimates that this would cost about \$80 million less than the Administration's total fiscal year 1979 request.

The Senate bill would increase the minimum funding threshold to \$500 million for fiscal year 1979. HEW estimates that this portion of the bill would cost about \$100 million less than its total fiscal year 1979 request.

Guaranteed Student Loan Program

This program subsidizes interest costs and guarantees loan repayments. The Administration requested an additional \$297 million over the \$530 million appropriated for this program in fiscal year 1978. Through technical amendments, the Administration intends to address the problem of the availability of capital by making participation in the loan program more attractive to banks. Under these amendments, families with "adjusted family incomes" of up to \$40,000 would be eligible for interest subsidies worth as much as \$250 per year. (The present adjusted family income limit is \$25,000.)

In fiscal year 1979, the Administration estimates that its proposed changes in the Guaranteed Student Loan Program would support 250,000 new loans to students in families with incomes in excess of \$16,000. (The Administration estimates that, in fiscal year 1978, more than one million students had loans and that 350,000 loans went to students in families with incomes above \$16,000.)

(According to the Department of Health, Education, and Welfare, an "adjusted family income" of \$40,000 is approximately equal to an adjusted gross income of \$47,000 for a family of four, and an "adjusted family income" of \$25,000 is approximately equal to an adjusted gross income of \$30,000 for a family of four.)

The House bill provides that all families with a student in school would be eligible for Federal interest subsidies, regardless of family income, and that the Federal government would pay lenders an addition 1/2 percent "special allowance" for the period during which the loans are repaid in installments. HEW estimates that this portion of the bill would cost \$9 million more than its total fiscal year 1979 request.

The Senate bill provides that all families with a student in school would be eligible for a Federal interest subsidy, regardless of family income. HEW estimates that this portion of the bill would cost \$6 million less than its total fiscal year 1979 request.

Supplemental Educational Opportunity Grant Program

The Administration requested no change in this program.

The House bill increases the minimum funding threshold for the Supplemental Educational Opportunity Grant Program to \$340.1 million in fiscal year 1979 and to \$450 million in fiscal year 1980. HEW estimates that this would cost more than \$70 million over the Administration's total fiscal year 1979 request.

The Senate bill increases the minimum funding threshold to \$370 million in fiscal year 1979 and to \$450 million in fiscal year 1980. HEW estimates that this would cost \$100 million over its total fiscal year 1979 request.

State Student Incentive Grant Program

The Administration requested no change in this program.

The House bill provides that when this program is funded above the \$75 million level, States must match the increase in their expenditures above the fiscal year 1979 level with "new" State dollars. HEW estimates that this portion of the bill would cost \$10 million more than the Administration's fiscal year 1979 request.

Under the Senate bill, States with Constitutional prohibitions against funding colleges with religious affiliations would be permitted to participate in the SSIG Program. HEW estimates that this portion of the bill would entail no increased cost.

3. Administration proposal: elementary and secondary education

a. General description

The Administration proposal, introduced in the House as H.R. 11282, primarily is concerned with reauthorizing and improving a number of existing HEW programs dealing with elementary and secondary education.

Title I of the Elementary and Secondary Education Act

The Administration has requested approximately \$3.4 billion for Title I of ESEA in fiscal year 1979. Approximately \$400 million has been requested for targeting additional funds into poverty-stricken school districts. These additional funds would be allocated to school districts with at least 20 percent or 5,000 poor students. Using this formula, about 3,500 of the nation's 14,000 Title I districts would receive extra funds.

The Administration proposes a new part to Title I which would match expenditures by States for compensatory education programs at the rate of one Federal dollar for every two State dollars. To qualify, a State compensatory program would have to be very similar to Title I: funds must be used for disadvantaged children; funds must be used for supplemental, compensatory purposes; and the State program must be evaluated on a regular basis.

In order to increase local flexibility in administering Title I, the Administration proposes to allow local school districts to use Title I funds for total school plans in schools with more than 80 percent Title I students and, under certain circumstances, to give districts more discretion about which schools receive Title I and other State compensatory funds.

The Basic Skills and Educational Quality Act

The Administration would establish new discretionary authority to coordinate and consolidate demonstration projects for improving basic skills. This authority would expand the National Reading Improvement Act (under Title II of ESEA) to promote student achievement in reading, mathematics, and written and oral communication.

The Special Projects Act (Title III of ESEA)

Beginning in fiscal year 1979, the statutory rules which restrict the flexibility of Congress and the Secretary of HEW by requiring them to allocate funds according to the most pressing needs would be removed. Under this proposal, each of the authorized activities included in the Special Projects Act would have to be funded at some level, but

the statute itself would not establish either a maximum or a minimum. There also would be authority to permit some funding of special projects which are not among the specifically enumerated activities.

Beginning in fiscal year 1980, the list of authorized activities would be revised. Arts education, consumers' education, education of gifted and talented children, and metric education would be retained as authorized activities. The Alcohol and Drug Abuse Education Act and the Environmental Education Act would continue as separately authorized programs. The Women's Educational Equity Act would become an independent program. The Career Education Program would be expanded into a Career Education and Youth Employment Program, to include a broader authority to aid students in making the transition from school to work. The Community Schools Program would focus more sharply on secondary schools and on creating new relationships between educational and other community services.

Also, beginning in fiscal year 1980, a new small grants section would be added to the Special Projects Act, under which grants of up to \$25,000 could be provided to fund proposals from teachers, administrators, and other individuals

Title IV of the Elementary and Secondary Education Act

To reflect the emphasis on basic skills and educational quality in the Federal demonstration activities, the Administration proposes a restructuring of the State-based resource and demonstration programs contained in Title IV of ESEA. The revision would focus on improving local educational practices. In addition to guidance and counseling activities, it would include a new set-aside for State-approved, locally-run programs to improve basic skills and compensatory education.

Another revision would strengthen State educational agency management and would require that States establish methods of coordinating teacher training activities funded from Federal, State, and local sources.

The provision of instructional materials and library resources would continue with a new authority for schools to purchase materials which parents can use in tutoring their children at home.

Title VII of the Elementary and Secondary Education Act (Bilingual Education)

The Administration would increase the authorization for research by \$15 million (there is presently a \$5 million ceiling on research and demonstration activities) and place special emphasis on research directed toward teacher training and the ways in which cultural background can aid English language instruction. Federal funding would be limited to five years and would be phased down over the life of a project as State and local support increases.

Impact Aid

The Administration proposes eliminating Impact Aid payments for children whose parents work on Federal property outside the county in which the school district is located. Also, the Administration would study the elimination of payments for other children whose parents work on Federal property outside the school district.

The Administration proposes a 3-percent "absorption" provision to eliminate payments for the number of Federal children equal to

3 percent of the school district's non-Federal enrollment. The Administration estimates that the national average of Federal children in school districts is about 3 percent of non-Federal enrollment. The Administration would change the computation of the local contribution rate (the amount paid to the school district per child) to reflect more accurately a district's real burden. Payments for "public housing" children would be held at fiscal year 1978 levels for fiscal years 1979 and 1980 and then be phased out. To ensure that no school district will suffer a sudden decrease in impact aid payments as a result of these proposed reforms, the Administration proposes a 75-percent hold harmless provision.

The Administration estimates that, if these reforms took effect in 1979, program costs would be \$735 million, a savings of \$75 million below the \$811 million it would cost to carry out the impact aid program under current law.

The Adult Education Act

Currently, the Adult Education Program reaches only a fraction of the eligible individuals (about 1.5 million of more than 51 million adults who have not completed high school). This program would be revised: (1) to include an emphasis on functional literacy; (2) to expand eligible providers of adult education to include such groups as business, labor, and industry; (3) by requiring States to develop plans for expanding their service delivery systems; and (4) by adding a new research, development, dissemination, and evaluation authority at the Federal level.

Women's Education Equity Act

The Administration proposes authorization of the Women's Education Equity Act as a separate program rather than as a part of the Special Projects Act, with increased emphasis on implementing women's educational equity at particular educational institutions, especially in relation to Title IX of the Education Amendments of 1972. Appropriation of such sums as would be necessary to carry out this expanded purpose would be authorized.

The Emergency School Aid Act

ESAA has two basic allocation mechanisms. In the "apportionment" programs, which include basic grants, pilot projects, and grants to non-profit organizations, funds are distributed to the States on the basis of minority enrollment. Under the discretionary section of ESAA, the Assistant Secretary of HEW determines which school districts need funds to deal with the immediate effects of school desegregation and for other purposes. Currently, more than \$30 million is distributed through apportionment for pilot projects in compensatory education. The Administration proposes to move these funds from the apportionment to the discretionary section of ESAA, and then hold apportionment at \$155 million, thus maintaining fiscal year 1978 apportionment levels for basic grants and grants to non-profit organizations.

The Administration also proposes to initiate multi-year grants for up to five years, instead of the present year-by-year grant process. However, an annual civil rights clearance still would be required.

The Administration further proposes creating authority for discretionary, 66-percent Federal matching grants to States with programs to assist local officials to plan and promote voluntary reductions in racial isolation.

b. Nonpublic school children

Provisions of Titles I and IV of ESEA, the Bilingual Education Act, ESAA, and various other statutes require that children attending nonpublic schools participate on an equitable basis in these programs. State and local educational agencies receiving Federal funds under these programs are responsible for ensuring that equitable participation is provided to nonpublic school children.

The Administration proposes to create an Office of Nonpublic Schools within the Office of Education to monitor and coordinate the provision of services to nonpublic school children under all Federal elementary and secondary education programs that call for the participation of such children.

In order to increase the participation of nonpublic school children in ESEA Title I programs, the Administration would require that spending for educationally deprived nonpublic school children be comparable, consistent with their numbers and educational need, to spending for public school children; that new Title I funds be subject to the same requirements for participation of nonpublic school children as the basic Title I grant program; and that State plans contain monitoring and enforcement provisions concerning participation of nonpublic school children.

In Title IV of ESEA, the Administration would require States to develop plans for ensuring equitable participation of nonpublic school children in all Federal programs. Also, the revised authorities in Titles II and III of ESEA—the Basic Skills and Educational Quality Act and the Special Projects Act—would require the equitable participation of children who attend nonpublic schools.

The “by-pass” authority which the Federal government may use to provide constitutionally permissible services directly to nonpublic school students, if the States and localities fail to discharge their statutory obligations, would be strengthened.

4. Cost Comparison of Administration proposal with House and Senate bills

Post-secondary education

Table 2, below, compares the cost for fiscal year 1979 of the Administration proposal for aid to post-secondary education with the post-secondary education aid bills reported by House and Senate committees.

TABLE 2.—ESTIMATED COSTS OF ADMINISTRATION'S POST-SECONDARY EDUCATION PROPOSALS AND COMPARISON WITH HOUSE AND SENATE BILLS, FISCAL YEAR 1979

[In millions]

Program	Adminis- tration request	House bill ¹	Senate bill ¹
Basic educational opportunity grant program-----	\$3,167	\$3,195- 3,459	\$3,324
College work study program-----	600	520	500
Supplemental educational opportunity grant program-----	270	340	370
Guaranteed student loan program-----	827	836	821
State student incentive grant program-----	77	87	77
National direct student loan program-----	286	286	286
Total-----	5,227	5,264- 5,528	5,378

¹ All estimates, including the amounts for the House and Senate bills are, HEW estimates.

Elementary and secondary education

Table 3, below, gives the estimated cost of the Administration's elementary and secondary aid proposals for fiscal year 1979. No cost estimates are shown for House and Senate bills because no action has been taken as of this time.

TABLE 3.—ESTIMATED COST OF ADMINISTRATION'S ELEMENTARY AND SECONDARY EDUCATION PROPOSALS, FISCAL YEAR 1979

[In millions]

Program	Adminis- tration request	House bill ¹	Senate bill ¹
ESEA, Title I-----	\$3, 379	-----	-----
Basic Skills and Educational Qual- ity Act-----	27	-----	-----
ESEA, Title III (Special Projects Act)-----	41	-----	-----
ESEA, Title IV-----	365	-----	-----
ESEA, Title VII (Bilingual Educa- tion)-----	150	-----	-----
Impact Aid-----	780	-----	-----
Adult Education Act-----	91	-----	-----
Women's Educational Equity Act--	9	-----	-----
Emergency School Aid Act-----	290	-----	-----
Total-----	5, 132	-----	-----

¹ No cost estimates are available on the House and Senate bills because legislative action on them has not yet been completed. All estimates were supplied by HEW.

D. Senate Finance Committee Bill

On February 28, 1978, the Senate Finance Committee reported H.R. 3946, a House-passed tariff bill, with an amendment providing a refundable Federal income tax credit for tuition and fees paid for undergraduate college and post-secondary vocational school expenses after August 1, 1978, and for elementary and secondary educational expenses after August 1, 1980. On August 1, 1981, the credit would be extended to the educational expenses of graduate students and part-time students. The bill would allow taxpayers a refundable credit in an amount equal to 50 percent of tuition and fees, with a maximum credit of \$250 per student per year beginning August 1, 1978, and increasing to a maximum credit of \$500 per student on August 1, 1980, and thereafter.

Eligible expenses

The credit would be available for certain educational expenses paid by an individual for himself, his spouse, or his dependents. The credit would be available only for tuition and fees required for a student's enrollment at an eligible institution. It would not apply to amounts paid for books, supplies and equipment or for personal living or family expenses. No credit would be allowed for recreational courses or for education below the first grade level.

Eligible institutions

In order to qualify as an eligible educational institution, elementary and secondary schools which are privately operated must either be accredited or approved under State law or meet State compulsory school attendance requirements and they must be tax-exempt organizations described in section 501(c)(3). In order to be tax exempt as described in Code section 501(c)(3), a school must be nonprofit and must not discriminate on the basis of race.

The terms "elementary school" and "secondary school" include facilities which offer education as a substitute for public elementary or secondary education to individuals who are physically or mentally disabled.

Offsets

The bill would require that tuition expenses taken into account for the credit be reduced by the amount of certain tax-free scholarships, fellowships and other nontaxable educational assistance. These amounts are to be matched against the educational expenses for which the assistance is granted. If the grantor of the scholarship does not apportion the award between eligible and ineligible educational expenses, a reasonable allocation may be made under IRS regulations. Otherwise, it will be presumed that the award should be applied first to reduce tuition and fees.

Limitations

No credit would be allowed to a taxpayer who is claimed as a dependent by any other person. A taxpayer may claim a credit for a spouse's tuition and fees only if the taxpayer may claim a personal exemption for the spouse or the taxpayer and spouse file a joint return. In addition, no other tax deduction or tax credit (for example, the business expense deduction or child care credit) would be allowed with respect to any amount paid for tuition, except to the extent that the total tuition payment exceeds the amount necessary to claim the maximum tuition credit allowable under the bill.

Relationship of credit to other educational assistance programs

The bill specifically provides that any refund or reduction in tax liability which results from claiming a tuition tax credit is not to be taken into account as income or receipts in determining the individual's eligibility (or any other individual's eligibility) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal educational assistance program or under any State or local educational assistance program which is financed in whole or in part with Federal funds.

Examination of books and records

The bill provides that the books and records of a school operated in conjunction with a church may be examined by the Internal Revenue Service only to the extent necessary to determine that the school is an eligible educational institution.

Judicial review

In order to resolve quickly any questions which may arise concerning its constitutionality, the bill provides for the expeditious disposition of legal proceedings brought with respect to any provision of the credit. The bill specifies that, if any judicial proceeding is brought in a U.S. district court concerning the constitutional validity of any provision of the tuition tax credit, the district court shall immediately certify all questions involving the constitutionality of that provision to the United States Court of Appeals for the circuit involved. The Court of Appeals shall hear the matter sitting en banc. An appeal from a decision of the Court of Appeals is to be brought directly to the U.S. Supreme Court within 20 days after the decision of the appellate court is entered.

Separability

The bill specifically provides that a judicial decision holding any provision of the tuition tax credit or the application of any provision of the credit to any person or in any circumstances to be invalid shall not affect the remainder of the credit provisions nor the application of the other provisions to other persons or circumstances.

Revenue effect

The bill would decrease budget receipts by \$39 million in fiscal year 1978, by \$916 million in fiscal year 1979, by \$1,418 million in fiscal year 1980, by \$2,835 million in fiscal year 1981, by \$4,479 million in fiscal year 1982, and by \$5,290 million in fiscal year 1983.

E. Constitutionality

1. Supreme Court decisions

The constitutionality of providing Federal tax benefits to nonpublic school students or their parents has long been a subject of debate because of the sectarian character of most nonpublic schools. No case dealing with tax credits or deductions directly related to the actual cost of nonpublic school tuition has been decided by the Supreme Court. However, in *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973), the Court held that a New York State income tax deduction for each child attending a nonpublic secondary or elementary school in an amount unrelated to the actual cost of tuition violated the establishment clause of the First Amendment of the U.S. Constitution.³ Although the *Nyquist* decision did not deal specifically with tax credits or deductions based on the actual cost of tuition, the Court's opinion suggests that these types of benefits also might be unconstitutional. In testing the constitutionality of a statute under the establishment clause of the First Amendment, the Court applied three cumulative tests:⁴

- (1) the statute must have a secular purpose;
- (2) the primary effect of the statute must neither advance nor inhibit religion; and
- (3) the statute must not foster excessive government entanglement with religion.

The Court concluded that the New York State statute met the secular purpose test, but held that the statute failed the primary effect test, and indicated *in dicta* that prospects for passing the excessive entanglement test were not good. In its decision, the court cited the case of *Kosydar v. Wolman*, 353 F. Supp. 744 (S.D. Ohio 1972) in which the United States district court held that a State refundable tuition tax credit based on educational expenses incurred and subject to a dollar limitation violated the Establishment Clause.

Although tax credits or deductions for nonpublic elementary or secondary schools may entail constitutional difficulties, Federal aid to church-related colleges and universities generally has been regarded with less suspicion by the Supreme Court. In upholding construction grants to church-related colleges and universities for nonsectarian facilities, the Court found in *Tilton v. Richardson*, 403 U.S. 672 (1971), that there was much less likelihood that religion would permeate secular education at that level, and thus the risk that government aid would support religious activities or foster excessive government entanglement with religion was reduced significantly.

³The First Amendment states that: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof * * *"

⁴To be found constitutional under the establishment clause, a statute must pass all three tests. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

2. Department of Justice opinion

On March 17, 1978, the Attorney General of the United States informed the Secretary of Health, Education and Welfare that it was the opinion of the Attorney General that the type of tax credits currently under consideration by Congress would be held unconstitutional insofar as they provide aid at the elementary and secondary school level, but would be held constitutional insofar as they provide aid at the college level. The opinion is based largely on the reasoning in the Supreme Court decisions which are discussed above.

III. EXPLANATION OF H.R. 11776

H.R. 11776, introduced by Mr. Vanik on March 22, 1978, would provide a Federal income tax credit for tuition paid to privately operated elementary and secondary schools and to post-secondary vocational schools and colleges. When fully implemented, the bill would allow a taxpayer to claim a credit equal to 50 percent of tuition paid for himself, his spouse, and each of his dependents who are full-time students, with a maximum credit of \$100 per student at the elementary and secondary level and a maximum credit of \$250 per student at the post-secondary level. The credit would terminate with respect to any taxable year beginning after December 31, 1980.

Maximum credit

The credit would be phased-in in three stages. Effective August 1, 1978, taxpayers would be allowed a maximum credit of \$50 per student for tuition paid for elementary and secondary school students and \$100 per student for tuition paid for post-secondary students for education furnished between August 1 and December 31, 1978. In calendar year 1979, the maximum credit would increase to \$100 at the elementary and secondary level and \$150 at the post-secondary level. In calendar year 1980, the maximum post-secondary credit would increase to \$250.

Eligible expenses

The credit would be available only with respect to tuition paid for individuals who are full-time students during any four calendar months of a calendar year. No credit would be allowed for part-time students, for graduate study, for education below the first grade level, or for attendance at a kindergarten or nursery.

The credit could be claimed only for tuition paid by the taxpayer for enrollment or attendance at an eligible institution. It would not apply to amounts paid for books, supplies, equipment, or personal living or family expenses.

In order to qualify as an eligible educational institution, elementary and secondary schools must be privately operated schools which are accredited or approved under State law or meet State compulsory school attendance requirements and which are exempt from tax under code section 501(c)(3). In order to be tax exempt under section 501(c)(3), a school must be nonprofit and must not discriminate on the basis of race.

Offsets

The bill would require that tuition expenses taken into account for the credit be reduced by certain tax-free scholarships, fellowships and certain other nontaxable education assistance, such as Veterans' benefits. This offset rule would pro-rate tax-free educational awards between tuition and other expenses which are ineligible for the credit, except when an award must be used only for tuition.

Limitations

No credit would be allowed to a taxpayer who is claimed as a dependent by any other person. A taxpayer may claim a credit for a spouse's tuition only if the taxpayer may claim a personal exemption for the spouse or the taxpayer and spouse file a joint return. In addition, no other tax deduction or tax credit (for example, the business expense deduction or child care credit) would be allowed with respect to any amount paid for tuition, except to the extent that the total tuition payment exceeds the amount necessary to claim the maximum tuition credit allowable under the bill.

Relationship of credit to other educational assistance programs

The bill specifically provides that any reduction in tax liability which results from claiming a credit for educational expenses is not to be taken into account in determining the individual's eligibility (or any other individual's eligibility) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal educational assistance program or under any State or local education assistance program which is financed in whole or in part with Federal funds.

Examination of books and records

The bill provides that the books and records of a school operated in conjunction with a church may be examined by the Internal Revenue Service only to the extent necessary to determine that the school is an eligible educational institution.

Judicial review

In order to resolve quickly any questions which may arise concerning its constitutionality, the bill provides for the expeditious disposition of legal proceedings brought with respect to any provision of the credit. The bill specifies that, if any judicial proceeding is brought in a U.S. district court concerning the constitutional validity of any provision of the tuition tax credit, the district court shall immediately certify all questions involving the constitutionality of that provision to the United States Court of Appeals for the circuit involved. The Court of Appeals shall hear the matter sitting en banc. An appeal from a decision of the Court of Appeals is to be brought directly to the U.S. Supreme Court within 20 days after the decision of the appellate court is entered.

Revenue effect

H.R. 11776 would reduce budget receipts by \$33 million in fiscal year 1978, by \$808 million in fiscal year 1979, by \$1,282 million in fiscal year 1980 and by \$1,402 million in fiscal year 1981.

IV. OTHER PROPOSALS

A. Messrs. Frenzel and Burke—Tax Credit

Messrs. Frenzel and Burke have co-sponsored legislation to provide refundable tuition tax credits for post-secondary and elementary and secondary education. They support H.R. 3946, as reported by the Senate Finance Committee on February 28, 1978. (See the explanation of the Finance Committee bill in I.L.D., above.)

B. Mr. Rangel—Tax Credit

Mr. Rangel is sponsoring a proposal to provide a refundable tax secondary vocational education, and for private elementary and secondary schools. The provisions of this proposal generally are similar to those of H.R. 11776, except that the credit maximum is \$250 for full-time students at all educational levels. Part-time students would be entitled to a 25-percent credit with a \$125 credit maximum. The credit would take effect in two stages: August 1, 1978, for higher education, including graduate schools, and August 1, 1979, for elementary and secondary schools. The bill would disallow credits for tuition paid to any school which discriminates on the basis of race. The maximum credit would be reduced by \$1 for every \$20 of adjusted gross income for AGI's above \$15,000.

This proposal would result in revenue losses of \$31 million in fiscal year 1978, \$769 million in fiscal year 1979, \$1,197 million in fiscal year 1980, \$1,382 million in fiscal year 1981, \$1,414 million in fiscal year 1982, and \$1,440 million in fiscal year 1983.

C. Mr. Stark—Tax Credit

Mr. Stark has introduced H.R. 11899 which would provide an annual refundable tax credit of \$100 for each dependent child of a taxpayer who is a student at an eligible educational institution.

The credit would be effective for 1978 and would apply only to children who are full-time undergraduate or post-secondary vocational students for 1978 and 1979. Beginning in 1980, it would be expanded to children in elementary and secondary schools (including vocational secondary schools) and preschool education program centers. The credit would be fully effective in 1981 when it would be extended to dependent children who are part-time or graduate students. The credit would terminate after 1985.

The bill provides an expedited judicial review procedure, a limitation on the examination of books and records of church-related schools, and for the disregard of the reduction in income tax liability due to the credit. These provisions are similar to the provisions in H.R. 11776 and the Senate Finance bill.

This bill would result in revenue losses of \$65 million in fiscal year 1978, \$436 million in fiscal year 1979, \$1,173 million in fiscal year 1980, \$5,331 million in fiscal year 1981, \$5,372 million in fiscal year 1982, \$5,359 million in fiscal year 1983, \$5,372 million in fiscal year 1984, and \$5,381 million in fiscal year 1985.

D. Mr. Martin—Tax Credit

Mr. Martin introduced H.R. 11746 on March 22, 1978, to provide a nonrefundable tuition tax credit for dependents' post-secondary education tuition. The credit is allowed for 50 percent of tuition which is paid by the taxpayer and which exceeds 5 percent of the taxpayer's adjusted gross income. The maximum credit is \$500 per dependent. If the expenses for a dependent are paid by more than one taxpayer, the credit for the dependent's expenses must be prorated among the taxpayers. However, only the taxpayer who is entitled to claim the student as a dependent may claim the credit.

Eligible expenses include tuition and academic fees, but not fees which are for predominately athletic, recreational, social, or similar activities. Eligible educational institutions are institutions regularly offering education at a level above the twelfth grade, which are either accredited institutions of higher education to which contributions are deductible for Federal income tax purposes or which are accredited vocational schools.

No trade or business expense deduction under section 162 is allowed for any expense taken into account in determining this credit, unless the taxpayer elects not to claim the credit.

The bill applies to taxable years beginning after December 31, 1978.

E. Mr. Schulze—Tax Credit

Mr. Schulze has introduced H.R. 10755 which includes the provision of a nonrefundable tax credit of up to \$100 per taxpayer (that is, per return) for educational expenses paid by a taxpayer for himself, his spouse, or dependents. Eligible expenses must be incurred for a full-time student at an institution of higher learning, a vocational school, or a nonprofit elementary or secondary school. Eligible expenses include tuition, fees, books and other equipment required for instruction, and are reduced by nontaxable scholarship and fellowship grants and Veterans' benefits.

This bill would entail revenue losses of approximately \$111 million in fiscal year 1979, \$744 million in fiscal year 1980 and \$745 million annually through fiscal year 1983.

F. Mr. Mikva—Tax Deferral

Mr. Mikva is proposing legislation to provide deferral on Federal income tax liability for tuition paid to post-secondary vocational schools and colleges. When fully implemented, the bill would allow a taxpayer to defer as much as \$2,000 in Federal income taxes per year for tuition paid for himself, his spouse, and each of his dependents who are full-time students. No deferral would be allowed for part-time students or for first-year post-secondary students.

The deferral would be phased in over three stages. It would become effective August 1, 1978. For 1978, taxpayers would be allowed a maximum deferral of \$1,000 for post-secondary students for education furnished between August 1 and December 31, 1978. In calendar year 1979, the maximum deferral would continue to be \$1,000. For calendar years 1982 through 1985, the maximum deferral would be \$1,500. For calendar year 1986 and thereafter, the maximum deferral would be \$2,000. Deferred amounts would be repaid over ten years beginning after the student's graduation with a 3 percent interest charge.

The deferral could be claimed only for tuition paid by the taxpayer for enrollment or attendance at an eligible institution. It would not apply to amounts paid for fees, books, supplies, equipment, or personal living or family expenses.

The proposal requires that the maximum deferral amount be reduced by certain tax-free scholarships, fellowships and other nontaxable educational assistance on a dollar-for-dollar basis. This offset rule would prorate tax-free educational awards between tuition and other expenses which are ineligible for the deferral, except when an award must be used only for tuition.

No deferral would be allowed to a taxpayer with respect to the tuition of a child age 19 or over for whom the taxpayer claims a dependency exemption. In addition, no other tax deduction, for example, the business expense deduction, would be allowed with respect to any amount paid for tuition, except to the extent that the total tuition payment exceeds the amount necessary to claim the maximum tuition tax deferral allowable,

Reductions in individuals' Federal income tax liability attributable to tuition tax deferrals would not be permitted to be taken into account in determining their eligibility for, or the amount of their or other individual's benefits or assistance under, any Federally funded educational assistance program.

The bill would take effect August 1, 1978, with respect to amounts paid on or after that date for education furnished on or after that date.

G. Mr. Steiger—Guaranteed Student Loan Program

Mr. Steiger has proposed several changes to the Guaranteed Student Loan Program. Under these proposals, the Federal Government would collect repayments of Federal student loans by means of annual installments paid through the Internal Revenue Service income tax collection system. IRS loan collection would be part of a broader program increasing student borrowing ceilings and liberalizing eligibility and participation requirements for lending institutions involved in Federal student loan programs.

In addition, the maximum loans would be increased from \$2,500 to \$3,500 per year, the Student Loan Market Association (Sally Mae) could have its portfolio composition specified by the Secretary of HEW, and a panel would be formed to review problems relating to the program.

V. ISSUES

The committee's consideration of H.R. 11776 will involve a number of detailed issues about the form of tax benefit, the individuals entitled to and covered by the benefit, eligible expenses, and the relationship of the benefit to other tax provisions and other educational assistance programs.

A. Form of Credit

1. *Flat or percentage*

A tax credit can be designed to allow an offset against tax liability for a flat dollar amount (a "dollar-for-dollar" credit) or for a percentage of eligible expenses.

A percentage credit requires an extra computation by the taxpayer. However, by allowing a credit for only some fraction of expenses paid by a taxpayer, the committee can insure that the taxpayer pays for some part of the expenditure with his own funds.

Some proponents of tuition tax credits have contended that by basing the credit on a percentage of the expenditures, the committee might strengthen the constitutional stature of credits, particularly those for elementary secondary education which possibly might contravene the Establishment Clause of the First Amendment. These proponents of percentage credits argue that a credit limited to 50 percent or less of tuition would not have a primarily sectarian purpose nor a primary effect of aiding religion because, they contend, at least half of any educational institution's program provides secular benefits.

2. *Maximum credit*

The committee may wish to put a maximum or ceiling on the credit which a taxpayer may claim. Adopting a maximum credit amount reduces revenue loss. The level of the maximum, together with the determination of whether the credit should be a flat dollar amount or a percentage of expenses, may have some marginal effect on the types of institutions most benefiting from the credit. If flat and percentage credits involving similar revenue losses are compared, flat credits with low ceilings generally direct more aid to individuals paying tuition to lower-cost educational institutions. By contrast, the lower the percentage of credit and the higher the maximum credit amount, the more a credit tends to benefit individuals paying tuition to higher-cost educational institutions.

3. *Per taxpayer or per student*

If a maximum is imposed, it may be applied on a per taxpayer, that is, per return, or a per student basis. The majority of legislative proposals, including H.R. 11776, would provide a per student credit.

B. Refundability

The committee may wish to consider making the credit refundable. A refundable credit would extend benefits to individuals who have no tax liability or whose tax liability is too small to benefit fully from the full amount of the credit. However, a refundable tax credit entails greater revenue losses than a nonrefundable credit. In addition, a refundable credit might offer taxpayers who would otherwise remain in the lower cost or public schools greater incentive than a nonrefundable credit would offer to switch to higher cost or private education and thereby cause a greater decrease in lower-cost or public school enrollment than would occur with a nonrefundable credit.

C. Income Phaseout

Most tuition tax credit proposals, including H.R. 11776, provide benefits to all taxpayers regardless of income tax level. If the committee wishes to target benefits to lower- and middle-income taxpayers and deny the credit to higher income groups, it could adopt an income phaseout, that is, gradually reduce the benefits afforded by the credit at higher income levels. For example, a phaseout could begin at \$40,000 of adjusted gross income. However, the adoption of an income phaseout would increase the complexity of a credit both for taxpayers and IRS administrators.

D. Eligible Institutions

H.R. 11776 provides a credit for tuition paid to undergraduate schools and post-secondary vocational schools, as well as to secondary and elementary schools at or above the first grade level. Proponents of credits for elementary and secondary education who are concerned about the possible constitutional objections to such credits have contended that combining legislation providing credits for elementary and secondary schools with credits for higher education might reduce the likelihood that the elementary and secondary provisions would be held unconstitutional. Although elementary and secondary credits, as well as post-secondary credits, involve significant revenue losses, elementary and secondary credits set at the same levels as post-secondary credits generally would cost about one-third or one-fourth as much as credits for post-secondary education.

1. *Post-secondary education*

H.R. 11776 allows a tuition tax credit for full-time college undergraduate schools and full-time post-secondary vocational schools. The committee may wish to consider extending post-secondary credits to graduate students and to part-time students. However, providing tuition credits for part-time and graduate students could increase revenue losses from such legislation by approximately 75 percent.

2. *Elementary and secondary education*

a. Accreditation

Like the majority of tuition tax credit proposals, H.R. 11776 limits the credit to tuition paid to elementary and secondary schools which

are State-accredited or State-approved or which meet school compulsory attendance requirements imposed by a State. Generally, education below the first grade level would be ineligible for the credit.

b. Public and private schools

H.R. 11776 limits the credit for elementary and secondary schools to privately-operated institutions. The committee could consider whether public schools also should be eligible. Some proponents of elementary and secondary credits believe that by making the credit available to public schools, the criticism that the credit benefits primarily sectarian schools would be weakened. However, the committee could consider whether allowing a credit for public education might induce some public school districts to charge tuition, or might induce some parents to cross-register their children as nonresident, tuition-paying students in school districts other than their own home districts.

c. Antidiscrimination rules

Many bills, including H.R. 11776, require that privately-operated schools qualify as tax-exempt organizations under section 501(c)(3) in order to be eligible for the credit. This provision effectively requires an eligible school to be a nonprofit institution which does not discriminate on the basis of race. Some civil rights groups have advocated stronger antidiscrimination requirements. However, including an explicit antidiscrimination rule in the statute might be interpreted as weakening the present law antidiscrimination requirements applicable to tax-exempt schools under section 501(c)(3). The committee could consider including a discussion of its intention with respect to discrimination in its committee report.

d. Special education

H.R. 11776 also allows the credit for education at facilities which serve as a substitute for public elementary or secondary education for physically or mentally handicapped individuals.

E. Eligible Individuals

Most tuition tax credit proposals allow a taxpayer to claim a credit for eligible expenses which the taxpayer pays for himself, for his spouse and for any of his dependents for whom the taxpayer is entitled to claim a personal exemption.

1. Spouse

In order to claim the credit for a spouse's expenses, most tuition tax credit proposals require that the taxpayer be entitled to claim a personal exemption for the spouse or file a joint return with the spouse. These requirements also are contained in H.R. 11776.

2. Dependents

H.R. 11776 would deny credits to individuals who are dependents of another taxpayer. Thus, a student who is a dependent of his or her parents would not be entitled to claim a credit. The committee may wish to allow students who pay some or all of their own eligible expenses to claim a credit. If such students are allowed a credit either could be prorated among the taxpayers who pay the eligible expenses

of that student or the credit could be disallowed to any taxpayer other than the student. Although a pro-ration rule may be considered more equitable, it is the most complex. The requirement in H.R. 11776, that no individual who is claimed as a dependent on another taxpayer's return be allowed a credit, would be the simplest rule to administer for both taxpayers and the Internal Revenue Service.

F. Offsets Against Credit

1. *Tax-free awards*

Most tuition credit bills do not allow taxpayers a credit for tuition expenses which the taxpayer does not pay from his own funds. Generally, the bills require that the eligible expenses or the credit itself be reduced by nontaxable scholarships and other educational benefits received by the student and applied directly or indirectly against his educational expenses. H.R. 11776 provides an offset against eligible expenses for tax-free scholarships, fellowships and other similar amounts, such as Veterans' benefits, which are not included in a taxpayer's gross income.

2. *Type of rule*

The design of an offset rule can affect the distribution of benefits according to income class. H.R. 11776 contains a rule similar to the one adopted by the Senate Finance Committee. Except for cases where tax-free awards are provided specifically for tuition only, the bill allows a taxpayer to allocate awards on a pro rata basis between tuition (which is an expense eligible for the credit) and other expenses which may not be taken into account for the credit. This type of offset rule reflects a judgment that need-based awards take into account not only a student's tuition costs but also his expenses for books, supplies, room and board.

Rules other than proration also could be adopted. Rules which would require that tax-free awards first be used to reduce tuition or be used to reduce the amount of the credit itself could cut back significantly on the revenue loss from this legislation. However, such rules tend to direct the benefits of tuition credits to higher income taxpayers who generally are ineligible for many tax-free awards. This type of rule also would deny any credit to many poor and lower-middle income taxpayers who receive tax-free awards but who, nevertheless, may anticipate additional assistance from this legislation because they pay for at least some part of their educational expenses.

G. Disallowance of Other Deductions and Credits

In order to prevent "double dipping" with regard to educational expenses, H.R. 11776 and many other tuition credit proposals disallow all other income tax credits or deductions with regard to expenditures which are taken into account in determining a tuition tax credit. However, expenditures which exceed the amount necessary to claim the maximum credit to which a taxpayer is entitled may be treated as deductions or credits if they qualify under other Code provisions. The principal tax benefit affected by this rule is the deduction under section 162 for job-related educational expenses.

H. Expedited Judicial Review

In order to obtain early resolution of questions about the constitutionality of any provision or the application of any provision of tuition credit legislation, both H.R. 11776 and the Senate Finance Committee bill provide for expedited consideration of such a provision by the Federal courts.

I. Severability

It is the usual practice of the Federal courts to sever any provision which it finds invalid from the remainder of an Act and allow the remainder of the legislation to be effective, provided the remaining provisions can take effect independently. Only when there is a clear Congressional intent that an entire Act should be invalidated if any single provision of the Act is found to be invalid will the courts abandon their customary severability doctrine. The Senate Finance Committee tuition credit bill contains an express provision instructing the courts to sever any invalid provision from the rest of the legislation. H.R. 11776 contains no such provision; however, it is likely that the Federal courts would follow the customary severability doctrine unless the Congress strongly expressed a contrary intent. In any event, the Internal Revenue Code contains a general severability clause (sec. 7852(a)).

J. Relationship With Other Educational Assistance Programs

Both the Senate Finance Committee bill and H.R. 11776 require that the amount of any tax refund or reduction in tax liability resulting from the provision of tuition tax credits be disregarded in determining an individual's eligibility for, his or her amount of aid from, any Federally funded educational assistance program. This rule simplifies the administration of direct aid programs and avoids possible circularity in determining income and resources. However, if the tax refunds or reductions resulting from tuition credits constitute significant amounts, it might be more appropriate that they be reflected in determining eligibility and aid under other types of programs.

K. Effective Dates

While the Senate Finance Committee bill becomes effective in stages according to traditional August 1 through July 31 school years, H.R. 11776 takes effect on August 1, 1978, but applies on a calendar year basis thereafter. Because most taxpayers file calendar year returns, a calendar year credit would be simpler to compute.

The tuition tax credit provided by H.R. 11776 would terminate on December 31, 1980. The committee could consider a permanent credit or a temporary credit with a longer effective period.