

111TH CONGRESS  
1ST SESSION

# S. 250

To amend the Internal Revenue Code of 1986 to provide a higher education opportunity credit in place of existing education tax incentives.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2009

Mr. SCHUMER (for himself, Mr. BAYH, Mrs. BOXER, Mrs. MURRAY, Mr. BROWN, Mr. CASEY, Mr. LIEBERMAN, Mr. MERKLEY, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a higher education opportunity credit in place of existing education tax incentives.

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 “Higher Education Op-  
5 portunity Act of 2009”.

6 **SEC. 2. HIGHER EDUCATION OPPORTUNITY CREDIT.**

7 (a) IN GENERAL.—Section 25A of the Internal Rev-  
8 enue Code of 1986 (relating to Hope and Lifetime Learn-  
9 ing credits) is amended to read as follows:

1 **“SEC. 25A. HIGHER EDUCATION OPPORTUNITY CREDIT.**

2       “(a) ALLOWANCE OF CREDIT.—In the case of any  
3 eligible student for whom an election is in effect under  
4 this section for any taxable year, there shall be allowed  
5 as a credit against the tax imposed by this chapter for  
6 the taxable year in an amount equal to the lesser of—

7               “(1) the sum of—

8                       “(A) 100 percent of so much of the quali-  
9                       fied tuition and related expenses paid by the  
10                      taxpayer during the taxable year (for education  
11                      furnished to the eligible student during any  
12                      academic period beginning in such taxable year)  
13                      as does not exceed \$2,000,

14                      “(B) 50 percent of so much of such ex-  
15                      penses as exceeds \$2,000 but does not exceed  
16                      \$4,000, and

17                      “(C) 25 percent of so much of such ex-  
18                      penses as exceeds \$4,000 but does not exceed  
19                      \$8,000, or

20               “(2) the excess (if any) of \$16,000 over the ag-  
21               gregate credits allowed under this section with re-  
22               spect to such eligible student for all prior taxable  
23               years.

24       “(b) LIMITATIONS.—

25               “(1) LIMITATION BASED ON MODIFIED AD-  
26               JUSTED GROSS INCOME.—

1           “(A) IN GENERAL.—The amount which  
2 would (but for this paragraph) be taken into ac-  
3 count under subsection (a) for the taxable year  
4 shall be reduced (but not below zero) by the  
5 amount determined under subparagraph (B).

6           “(B) AMOUNT OF REDUCTION.—The  
7 amount determined under this subparagraph is  
8 the amount which bears the same ratio to the  
9 amount which would be so taken into account  
10 as—

11                   “(i) the excess of—

12                           “(I) the taxpayer’s modified ad-  
13 justed gross income for such taxable  
14 year, over

15                           “(II) \$70,000 (\$140,000 in the  
16 case of a joint return), bears to

17                           “(ii) \$10,000 (\$20,000 in the case of  
18 a joint return).

19           “(C) MODIFIED ADJUSTED GROSS IN-  
20 COME.—The term ‘modified adjusted gross in-  
21 come’ means the adjusted gross income of the  
22 taxpayer for the taxable year increased by any  
23 amount excluded from gross income under sec-  
24 tion 911, 931, or 933.

1           “(2) LIMITATION BASED ON AMOUNT OF  
2 TAX.—In the case of a taxable year to which section  
3 26(a)(2) does not apply, the credit allowed under  
4 subsection (a) for any taxable year shall not exceed  
5 the excess of—

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

9           “(B) the sum of the credits allowable  
10 under this subpart (other than this section and  
11 sections 23, 24, and 25B) and section 27 for  
12 the taxable year.

13           “(3) CREDIT ALLOWED ONLY FOR 3 ELIGIBLE  
14 STUDENTS.—The credit under subsection (a) to any  
15 taxpayer shall not be allowed with respect to more  
16 than 3 eligible students for any taxable year.

17           “(4) OTHER LIMITATIONS.—

18           “(A) CREDIT ALLOWED ONLY FOR FIRST 2  
19 YEARS OF GRADUATE EDUCATION.—An election  
20 to have this section apply with respect to any  
21 eligible student may not be made for any tax-  
22 able year if the student has completed (before  
23 the beginning of such taxable year) 2 years of  
24 graduate education at one or more eligible edu-  
25 cational institutions.

1           “(B) CREDIT ALLOWED FOR YEAR ONLY IF  
2 INDIVIDUAL IS AT LEAST 1/2 TIME STUDENT  
3 FOR PORTION OF YEAR.—The credit under sub-  
4 section (a) shall not be allowed for a taxable  
5 year with respect to the qualified tuition and re-  
6 lated expenses of an individual unless such indi-  
7 vidual is an eligible student for at least one aca-  
8 demic period which begins during such year.

9           “(C) DENIAL OF CREDIT IF STUDENT CON-  
10 VICTED OF A FELONY DRUG OFFENSE.—The  
11 credit under subsection (a) shall not be allowed  
12 for qualified tuition and related expenses for  
13 the enrollment or attendance of a student for  
14 any academic period if such student has been  
15 convicted of a Federal or State felony offense  
16 consisting of the possession or distribution of a  
17 controlled substance before the end of the tax-  
18 able year with or within which such period  
19 ends.

20           “(c) DEFINITIONS.—For purposes of this sub-  
21 section—

22           “(1) ELIGIBLE STUDENT.—

23           “(A) IN GENERAL.—The term ‘eligible stu-  
24 dent’ means, with respect to any academic pe-  
25 riod, a student who—

1 “(i) meets the requirements of section  
2 484(a)(1) of the Higher Education Act of  
3 1965 (20 U.S.C. 1091(a)(1)), as in effect  
4 on the date of the enactment of the Tax-  
5 payer Relief Act of 1997, and

6 “(ii) is carrying at least  $\frac{1}{2}$  the normal  
7 full-time work load for the course of study  
8 the student is pursuing.

9 “(B) WAIVER OF ENROLLMENT REQUIRE-  
10 MENT FOR CERTAIN WORKERS.—Subparagraph  
11 (A) shall be applied without regard to clause  
12 (ii) if the student is employed for at least 25  
13 hours per week during the academic period.

14 “(2) QUALIFIED TUITION AND RELATED EX-  
15 PENSES.—

16 “(A) IN GENERAL.—The term ‘qualified  
17 tuition and related expenses’ means tuition and  
18 fees required for the enrollment or attendance  
19 of an eligible student who is—

20 “(i) the taxpayer,

21 “(ii) the taxpayer’s spouse, or

22 “(iii) any dependent of the taxpayer  
23 with respect to whom the taxpayer is al-  
24 lowed a deduction under section 151,

1 at an eligible educational institution for courses  
2 of instruction of such individual at such institu-  
3 tion.

4 “(B) INCLUSION OF CERTAIN EXPENSES  
5 FOR BOOKS.—

6 “(i) IN GENERAL.—For purposes of  
7 subparagraph (A), tuition and fees shall  
8 include 50 percent of amounts paid or in-  
9 curred for books.

10 “(ii) LIMITATION.—The amount of  
11 tuition and fees taken into account under  
12 subparagraph (A) by reason of clause (i)  
13 for any taxable year shall not exceed \$400  
14 with respect to any eligible student.

15 “(C) EXCEPTION FOR EDUCATION INVOLV-  
16 ING SPORTS, ETC.—Such term does not include  
17 expenses with respect to any course or other  
18 education involving sports, games, or hobbies,  
19 unless such course or other education is part of  
20 the individual’s degree program.

21 “(D) EXCEPTION FOR NONACADEMIC  
22 FEES.—Such term does not include student ac-  
23 tivity fees, athletic fees, insurance expenses, or  
24 other expenses unrelated to an individual’s aca-  
25 demic course of instruction.

1           “(3) ELIGIBLE EDUCATIONAL INSTITUTION.—

2           The term ‘eligible educational institution’ means an  
3           institution—

4                   “(A) which is described in section 481 of  
5                   the Higher Education Act of 1965 (20 U.S.C.  
6                   1088), as in effect on the date of the enactment  
7                   of the Taxpayer Relief Act of 1997, and

8                   “(B) which is eligible to participate in a  
9                   program under title IV of the Higher Education  
10                  Act of 1965.

11          “(d) ELECTION NOT TO HAVE SECTION APPLY.—

12          A taxpayer may elect not to have this section apply with  
13          respect to the qualified tuition and related expenses of an  
14          individual for any taxable year.

15          “(e) SPECIAL RULES.—

16                  “(1) IDENTIFICATION REQUIREMENT.—No  
17                  credit shall be allowed under subsection (a) to a tax-  
18                  payer with respect to the qualified tuition and re-  
19                  lated expenses of an individual unless the taxpayer  
20                  includes the name and taxpayer identification num-  
21                  ber of such individual on the return of tax for the  
22                  taxable year.

23                  “(2) ADJUSTMENT FOR CERTAIN SCHOLAR-  
24                  SHIPS, ETC.—The amount of qualified tuition and  
25                  related expenses otherwise taken into account under

1 subsection (a) with respect to an individual for an  
2 academic period shall be reduced (before the applica-  
3 tion of subsections (a), (b), and (c)) by the sum of  
4 any amounts paid for the benefit of such individual  
5 which are allocable to such period as—

6 “(A) a qualified scholarship which is ex-  
7 cludable from gross income under section 117,

8 “(B) an educational assistance allowance  
9 under chapter 30, 31, 32, 34, or 35 of title 38,  
10 United States Code, or under chapter 1606 of  
11 title 10, United States Code, and

12 “(C) a payment (other than a gift, be-  
13 quest, devise, or inheritance within the meaning  
14 of section 102(a)) for such individual’s edu-  
15 cational expenses, or attributable to such indi-  
16 vidual’s enrollment at an eligible educational in-  
17 stitution, which is excludable from gross income  
18 under any law of the United States.

19 “(3) TREATMENT OF EXPENSES PAID BY DE-  
20 PENDENT.—If a deduction under section 151 with  
21 respect to an individual is allowed to another tax-  
22 payer for a taxable year beginning in the calendar  
23 year in which such individual’s taxable year begins—

1           “(A) no credit shall be allowed under sub-  
2           section (a) to such individual for such individ-  
3           ual’s taxable year, and

4           “(B) qualified tuition and related expenses  
5           paid by such individual during such individual’s  
6           taxable year shall be treated for purposes of  
7           this section as paid by such other taxpayer.

8           “(4) TREATMENT OF CERTAIN PREPAY-  
9           MENTS.—If qualified tuition and related expenses  
10          are paid by the taxpayer during a taxable year for  
11          an academic period which begins during the first 3  
12          months following such taxable year, such academic  
13          period shall be treated for purposes of this section  
14          as beginning during such taxable year.

15          “(5) DENIAL OF DOUBLE BENEFIT.—No credit  
16          shall be allowed under this section for any expense  
17          for which a deduction is allowed under any other  
18          provision of this chapter.

19          “(6) NO CREDIT FOR MARRIED INDIVIDUALS  
20          FILING SEPARATE RETURNS.—If the taxpayer is a  
21          married individual (within the meaning of section  
22          7703), this section shall apply only if the taxpayer  
23          and the taxpayer’s spouse file a joint return for the  
24          taxable year.

1           “(7) NONRESIDENT ALIENS.—If the taxpayer is  
2           a nonresident alien individual for any portion of the  
3           taxable year, this section shall apply only if such in-  
4           dividual is treated as a resident alien of the United  
5           States for purposes of this chapter by reason of an  
6           election under subsection (g) or (h) of section 6013.

7           “(f) REGULATIONS.—The Secretary may prescribe  
8           such regulations as may be necessary or appropriate to  
9           carry out this section, including regulations providing for  
10          a recapture of the credit allowed under this section in  
11          cases where there is a refund in a subsequent taxable year  
12          of any amount which was taken into account in deter-  
13          mining the amount of such credit.”.

14          (b) REPEAL OF DEDUCTION FOR QUALIFIED TUI-  
15          TION AND RELATED EXPENSES.—

16                 (1) IN GENERAL.—Part VII of subchapter B of  
17          chapter 1 of the Internal Revenue Code of 1986 is  
18          amended by striking section 222 (relating to quali-  
19          fied tuition and related expenses).

20                 (2) CLERICAL AMENDMENT.—The table of sec-  
21          tion for part VII of subchapter B of chapter 1 of  
22          such Code is amended by striking the item relating  
23          to section 222.

24          (c) CONFORMING AMENDMENTS.—

1           (1) Paragraph (1) of section 26(a) of the Inter-  
2           nal Revenue Code of 1986 is amended by inserting  
3           “25A,” after “24,”.

4           (2) Section 62(a) of such Code is amended by  
5           striking paragraph (18).

6           (3) Subparagraph (B) of section 72(t)(7) of  
7           such Code is amended by striking “section  
8           25A(g)(2)” and inserting “section 25A(e)(2)”.

9           (4) Section 221(d) of such Code is amended—

10           (A) by striking “section 25A(g)(2)” in  
11           paragraph (2)(B) and inserting “section  
12           25A(e)(2)”,

13           (B) by striking “section 25A(f)(2)” in  
14           paragraph (2)(B) and inserting “section  
15           25A(c)(3)”, and

16           (C) by striking “section 25A(b)(3)” in  
17           paragraph (3) and inserting “section  
18           25A(c)(1)”.

19           (5) Section 529 of such Code is amended—

20           (A) by striking “section 25A(g)(2)” in sub-  
21           clause (I) of subsection (c)(3)(B)(v) and insert-  
22           ing “section 25(e)(2)”, and

23           (B) by striking “section 25A(b)(3)” in  
24           clause (i) of subsection (e)(3)(B) and inserting  
25           “section 25A(c)(1)”.

1 (6) Section 530 of such Code is amended—

2 (A) by striking “section 25A(g)(2)” in sub-  
3 clause (I) of subsection (d)(2)(C)(i) and insert-  
4 ing “section 25A(e)(2)”, and

5 (B) by striking “section 25A(g)(2)” in  
6 clause (iii) of subsection (d)(4)(B) and inserting  
7 “section 25A(e)(2)”.

8 (7) Section 1400O of such Code is amended by  
9 adding at the end the following flush sentence:

10 “For purposes of this section, any reference to section 25A  
11 shall be treated as a reference to such section before the  
12 date of the enactment of this sentence.”.

13 (8) Subsection (e) of section 6050S of such  
14 Code is amended by striking “(without regard to  
15 subsection (g)(2) thereof)” and inserting “(without  
16 regard to subsection (e)(2) thereof)”.

17 (9) Subparagraph (J) of section 6213(g)(2) of  
18 such Code is amended by striking “section  
19 25A(g)(1)” and inserting “section 25A(e)(1)”.

20 (10) The table of sections for subpart A of part  
21 IV of subchapter A of chapter 1 of such Code is  
22 amended by striking the item relating to section 25A  
23 and inserting the following:

“Sec. 25A. Higher education opportunity credit.”.

24 (d) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to expenses paid after December

1 31, 2008 (in taxable years ending after such date), for  
2 education furnished in academic periods beginning after  
3 such date.

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