

110TH CONGRESS  
2D SESSION

# S. 2763

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

---

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

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

---

## 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 2008”.

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 an amount equal to the sum of—

7               “(1) 100 percent of so much of the qualified  
8 tuition and related expenses paid by the taxpayer  
9 during the taxable year (for education furnished to  
10 the eligible student during any academic period be-  
11 ginning in such taxable year) as does not exceed  
12 \$1,000,

13               “(2) 50 percent of so much of such expenses as  
14 exceeds \$1,000 but does not exceed \$3,000, and

15               “(3) 20 percent of so much of such expenses as  
16 exceeds \$3,000 but does not exceed \$5,500.

17       “(b) LIMITATIONS.—

18               “(1) LIMITATION BASED ON MODIFIED AD-  
19 JUSTED GROSS INCOME.—

20                       “(A) IN GENERAL.—The amount which  
21 would (but for this paragraph) be taken into ac-  
22 count under subsection (a) for the taxable year  
23 shall be reduced (but not below zero) by the  
24 amount determined under subparagraph (B).

25                       “(B) AMOUNT OF REDUCTION.—The  
26 amount determined under this subparagraph is

1 the amount which bears the same ratio to the  
2 amount which would be so taken into account  
3 as—

4 “(i) the excess of—

5 “(I) the taxpayer’s modified ad-  
6 justed gross income for such taxable  
7 year, over

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

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

12 “(C) MODIFIED ADJUSTED GROSS IN-  
13 COME.—The term ‘modified adjusted gross in-  
14 come’ means the adjusted gross income of the  
15 taxpayer for the taxable year increased by any  
16 amount excluded from gross income under sec-  
17 tion 911, 931, or 933.

18 “(2) LIMITATION BASED ON AMOUNT OF  
19 TAX.—In the case of a taxable year to which section  
20 26(a)(2) does not apply, the credit allowed under  
21 subsection (a) for any taxable year shall not exceed  
22 the excess of—

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

1           “(B) the sum of the credits allowable  
2           under this subpart (other than this section and  
3           sections 23, 24, and 25B) and section 27 for  
4           the taxable year.

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

9           “(4) OTHER LIMITATIONS.—

10           “(A) CREDIT ALLOWED ONLY FOR 4 TAX-  
11           ABLE YEARS.—An election to have this section  
12           apply with respect to any eligible student may  
13           not be made for any taxable year if such an  
14           election (by the taxpayer or any other indi-  
15           vidual) is in effect with respect to such student  
16           for any 4 prior taxable years.

17           “(B) CREDIT ALLOWED FOR YEAR ONLY IF  
18           INDIVIDUAL IS AT LEAST  $\frac{1}{2}$  TIME STUDENT  
19           FOR PORTION OF YEAR.—The credit under sub-  
20           section (a) shall not be allowed for a taxable  
21           year with respect to the qualified tuition and re-  
22           lated expenses of an individual unless such indi-  
23           vidual is an eligible student for at least one aca-  
24           demic period which begins during such year.

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

12          “(c) DEFINITIONS.—For purposes of this sub-  
13          section—

14                 “(1) ELIGIBLE STUDENT.—The term ‘eligible  
15                 student’ means, with respect to any academic period,  
16                 a student who—

17                         “(A) meets the requirements of section  
18                         484(a)(1) of the Higher Education Act of 1965  
19                         (20 U.S.C. 1091(a)(1)), as in effect on the date  
20                         of the enactment of the Taxpayer Relief Act of  
21                         1997, and

22                         “(B) is carrying at least  $\frac{1}{2}$  the normal  
23                         full-time work load for the course of study the  
24                         student is pursuing.

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

3           “(A) IN GENERAL.—The term ‘qualified  
4 tuition and related expenses’ means tuition and  
5 fees required for the enrollment or attendance  
6 of an eligible student who is—

7                   “(i) the taxpayer,

8                   “(ii) the taxpayer’s spouse, or

9                   “(iii) any dependent of the taxpayer  
10 with respect to whom the taxpayer is al-  
11 lowed a deduction under section 151,  
12 at an eligible educational institution for courses  
13 of instruction of such individual at such institu-  
14 tion.

15           “(B) INCLUSION OF CERTAIN EXPENSES  
16 FOR BOOKS.—

17                   “(i) IN GENERAL.—For purposes of  
18 subparagraph (A), tuition and fees shall  
19 include 50 percent of amounts paid or in-  
20 curred for books.

21                   “(ii) LIMITATION.—The amount of  
22 tuition and fees taken into account under  
23 subparagraph (A) by reason of clause (i)  
24 for any taxable year shall not exceed \$250  
25 with respect to any eligible student.

1           “(C) EXCEPTION FOR EDUCATION INVOLV-  
2           ING SPORTS, ETC.—Such term does not include  
3           expenses with respect to any course or other  
4           education involving sports, games, or hobbies,  
5           unless such course or other education is part of  
6           the individual’s degree program.

7           “(D) EXCEPTION FOR NONACADEMIC  
8           FEES.—Such term does not include student ac-  
9           tivity fees, athletic fees, insurance expenses, or  
10          other expenses unrelated to an individual’s aca-  
11          demic course of instruction.

12          “(3) ELIGIBLE EDUCATIONAL INSTITUTION.—  
13          The term ‘eligible educational institution’ means an  
14          institution—

15                 “(A) which is described in section 481 of  
16                 the Higher Education Act of 1965 (20 U.S.C.  
17                 1088), as in effect on the date of the enactment  
18                 of the Taxpayer Relief Act of 1997, and

19                 “(B) which is eligible to participate in a  
20                 program under title IV of the Higher Education  
21                 Act of 1965 (as so in effect).

22          “(d) ELECTION NOT TO HAVE SECTION APPLY.—  
23          A taxpayer may elect not to have this section apply with  
24          respect to the qualified tuition and related expenses of an  
25          individual for any taxable year.

1 “(e) SPECIAL RULES.—

2 “(1) IDENTIFICATION REQUIREMENT.—No  
3 credit shall be allowed under subsection (a) to a tax-  
4 payer with respect to the qualified tuition and re-  
5 lated expenses of an individual unless the taxpayer  
6 includes the name and taxpayer identification num-  
7 ber of such individual on the return of tax for the  
8 taxable year.

9 “(2) ADJUSTMENT FOR CERTAIN SCHOLAR-  
10 SHIPS, ETC.—The amount of qualified tuition and  
11 related expenses otherwise taken into account under  
12 subsection (a) with respect to an individual for an  
13 academic period shall be reduced (before the applica-  
14 tion of subsections (a), (b), and (c)) by the sum of  
15 any amounts paid for the benefit of such individual  
16 which are allocable to such period as—

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

19 “(B) an educational assistance allowance  
20 under chapter 30, 31, 32, 34, or 35 of title 38,  
21 United States Code, or under chapter 1606 of  
22 title 10, United States Code, and

23 “(C) a payment (other than a gift, be-  
24 quest, devise, or inheritance within the meaning  
25 of section 102(a)) for such individual’s edu-

1           cational expenses, or attributable to such indi-  
2           vidual's enrollment at an eligible educational in-  
3           stitution, which is excludable from gross income  
4           under any law of the United States.

5           “(3) TREATMENT OF EXPENSES PAID BY DE-  
6           PENDENT.—If a deduction under section 151 with  
7           respect to an individual is allowed to another tax-  
8           payer for a taxable year beginning in the calendar  
9           year in which such individual's taxable year begins—

10                   “(A) no credit shall be allowed under sub-  
11                   section (a) to such individual for such individ-  
12                   ual's taxable year, and

13                   “(B) qualified tuition and related expenses  
14                   paid by such individual during such individual's  
15                   taxable year shall be treated for purposes of  
16                   this section as paid by such other taxpayer.

17           “(4) TREATMENT OF CERTAIN PREPAY-  
18           MENTS.—If qualified tuition and related expenses  
19           are paid by the taxpayer during a taxable year for  
20           an academic period which begins during the first 3  
21           months following such taxable year, such academic  
22           period shall be treated for purposes of this section  
23           as beginning during such taxable year.

24           “(5) DENIAL OF DOUBLE BENEFIT.—No credit  
25           shall be allowed under this section for any expense

1 for which a deduction is allowed under any other  
2 provision of this chapter.

3 “(6) NO CREDIT FOR MARRIED INDIVIDUALS  
4 FILING SEPARATE RETURNS.—If the taxpayer is a  
5 married individual (within the meaning of section  
6 7703), this section shall apply only if the taxpayer  
7 and the taxpayer’s spouse file a joint return for the  
8 taxable year.

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

15 “(f) INFLATION ADJUSTMENTS.—

16 “(1) DOLLAR LIMITATION ON AMOUNT OF  
17 CREDIT.—

18 “(A) IN GENERAL.—In the case of a tax-  
19 able year beginning after 2008, each of the dol-  
20 lar amounts under subsection (a) shall be in-  
21 creased by an amount equal to—

22 “(i) such dollar amount, multiplied by

23 “(ii) the cost-of-living adjustment de-  
24 termined under section 1(f)(3) for the cal-  
25 endar year in which the taxable year be-

1           gins, determined by substituting ‘calendar  
2           year 2007’ for ‘calendar year 1992’ in sub-  
3           paragraph (B) thereof.

4           “(B) ROUNDING.—If any amount as ad-  
5           justed under subparagraph (A) is not a multiple  
6           of \$100, such amount shall be rounded to the  
7           next lowest multiple of \$100.

8           “(2) INCOME LIMITS.—

9           “(A) IN GENERAL.—In the case of a tax-  
10          able year beginning after 2008, the \$70,000  
11          and \$140,000 amounts in subsection (b)(1)(B)  
12          shall each be increased by an amount equal  
13          to—

14               “(i) such dollar amount, multiplied by

15               “(ii) the cost-of-living adjustment de-  
16               termined under section 1(f)(3) for the cal-  
17               endar year in which the taxable year be-  
18               gins, determined by substituting ‘calendar  
19               year 2007’ for ‘calendar year 1992’ in sub-  
20               paragraph (B) thereof.

21           “(B) ROUNDING.—If any amount as ad-  
22           justed under subparagraph (A) is not a multiple  
23           of \$1,000, such amount shall be rounded to the  
24           next lowest multiple of \$1,000.

25           “(g) PORTION OF CREDIT REFUNDABLE.—

1           “(1) IN GENERAL.—In the case of an eligible  
2 active duty student, the aggregate credits allowed  
3 under subpart C shall be increased by an amount  
4 equal to the applicable percentage of the eligible ac-  
5 tive duty student amount.

6           “(2) TREATMENT OF CREDIT.—The amount of  
7 the credit allowed under this subsection shall not be  
8 treated as a credit allowed under this subpart and  
9 shall reduce the amount of credit otherwise allowable  
10 under subsection (a) without regard to section 26(a)  
11 or subsection (b)(2), as the case may be.

12           “(3) DEFINITIONS.—For purposes of this sub-  
13 section—

14           “(A) ELIGIBLE ACTIVE DUTY STUDENT.—  
15 The term ‘eligible active duty student’ means  
16 an eligible student who has, at any time after  
17 September 11, 2001, served an aggregate of at  
18 least 90 days on active duty in the Armed  
19 Forces under one or more calls or orders to ac-  
20 tive duty for a period of more than 30 days.

21           “(B) APPLICABLE PERCENTAGE.—The  
22 term ‘applicable percentage’ means—

23           “(i) in the case of an eligible active  
24 duty student who has served an aggregate

1 of less than 1 year on active duty, 50 per-  
2 cent, and

3 “(ii) in the case of any other eligible  
4 active duty student, 100 percent.

5 “(C) ELIGIBLE ACTIVE DUTY STUDENT  
6 AMOUNT.—The term ‘eligible active duty stu-  
7 dent amount’ means the amount of the credit  
8 which would be allowed to the taxpayer under  
9 subsection (a) with respect to an eligible active  
10 duty student determined—

11 “(i) without regard to this subsection  
12 and the limitation under section 26(a)(2)  
13 or subsection (b)(2), as the case may be,

14 “(ii) without regard to subsection  
15 (b)(1), and

16 “(iii) by reducing (but not below zero)  
17 such amount (determined without regard  
18 to this clause) by an amount equal to—

19 “(I) the amount of the reduction  
20 determined under subsection  
21 (b)(1)(B), divided by

22 “(II) the number of eligible stu-  
23 dents with respect to which the tax-  
24 payer claimed a credit under this sec-  
25 tion.

1           “(D) OTHER TERMS.—The terms ‘active  
2           duty’ and ‘active duty for a period of more than  
3           30 days’ have the meanings given such terms  
4           under section 101(d) of title 10, United States  
5           Code.

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

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

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

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

23          (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, 2007 (in taxable years ending after such date), for  
2 education furnished in academic periods beginning after  
3 such date.

○