

**DESCRIPTION OF H.R. 8915, THE
“EDUCATION AND WORKFORCE FREEDOM ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for July 9, 2024, of H.R. 8915, the “Education and Workforce Freedom Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 8915, the “Education and Workforce Freedom Act”* (JCX-29-24), July 5, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

**A. Expand the Expenses Treated as Qualified Higher Education Expenses
for Purposes of 529 Accounts to Include Additional Elementary and
Secondary School Expenses and Certain Postsecondary Credentialing Expenses**

Present Law

Qualified tuition programs generally

To describe programs that are known colloquially as 529 plans, the Code uses the term “qualified tuition programs” and distinguishes between two types of programs.² One type of program, sometimes referred to as a prepaid tuition program, allows a person to purchase on behalf of a designated beneficiary tuition credits or certificates that entitle the beneficiary to the waiver or payment of the beneficiary’s qualified higher education expenses.³ Prepaid tuition programs are established and maintained by State governments (or their agencies or instrumentalities) and eligible educational institutions.⁴ The other type of program, sometimes referred to as a college savings plan, allows a person to make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account.⁵ A college savings plan may be established and maintained by State governments (or their agencies or instrumentalities), not by educational institutions.⁶

A qualified tuition program generally is exempt from Federal income taxation (but is subject to unrelated business income tax).⁷ As a consequence, contributors to, and beneficiaries of, these programs (whether prepaid tuition programs or college savings plans) generally have no taxable income inclusions from earnings on assets held in the programs.

To be treated as a qualified tuition program that is generally exempt from Federal income taxation, a program must satisfy several requirements. The program must provide that purchases of tuition credits or certificates or contributions to a program must be made only in cash.⁸ The program must provide separate accounting for each designated beneficiary.⁹ The program must provide that a contributor to, or a designated beneficiary under, the program may direct the

² Sec. 529(a), (b).

³ Sec. 529(b)(1)(A)(i).

⁴ *Ibid.* Section 529(e)(5) defines an eligible educational institution as an institution that (1) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. sec. 1088), as in effect on August 5, 1997, and (2) is eligible to participate in a program under title IV of such Act.

⁵ Sec. 529(b)(1)(A)(ii).

⁶ *Ibid.*

⁷ Sec. 529(a).

⁸ Sec. 529(b)(2).

⁹ Sec. 529(b)(3).

investment of any contributions to the program (or earnings on those investments) no more than twice a year.¹⁰ The program must not allow any interest in the program to be used as a security for a loan.¹¹ The program must provide adequate safeguards to prevent contributions on behalf of a designated beneficiary that exceed the amount necessary to pay the beneficiary's qualified higher education expenses.¹²

When there is a cash distribution under a qualified tuition program, the portion of the distribution that is considered to be earnings on contributions to the account is includible in the gross income of the recipient of the distributions only to the extent that the total amount of cash distributions during the taxable year exceeds the amount of qualified higher education expenses of the account beneficiary during that year.¹³ The income tax that is imposed on a recipient of a distribution that is included in the recipient's gross income is, with certain exceptions, increased by 10 percent of the amount of the inclusion.¹⁴

Qualified higher education expenses

Qualified higher education expenses include, among other expenses, tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the account beneficiary at an eligible educational institution (generally, a postsecondary school); expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with the beneficiary's enrollment or attendance at an eligible educational institution; expenses for the purchase of computer equipment and software to be used primarily by the beneficiary when enrolled at an eligible educational institution; and, in the case of a beneficiary who is at least a half-time student, reasonable costs for room and board while the beneficiary is attending an eligible educational institution.¹⁵

For certain purposes of section 529 (such as the exclusion from gross income for distributions from a qualified tuition program to pay qualified higher education expenses) but not for other purposes of section 529 (such as the requirement that a qualified tuition program must provide safeguards to prevent contributions on behalf of a beneficiary that exceed the amount necessary to pay the beneficiary's qualified higher education expenses), qualified higher education expenses also include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school;¹⁶ amounts for books, supplies,

¹⁰ Sec. 529(b)(4).

¹¹ Sec. 529(b)(5).

¹² Sec. 529(b)(6).

¹³ Sec. 529(c)(3)(A), (B)(ii). A payor of a distribution generally is required to report to the IRS and the recipient of the distribution on Form 1099-Q the amount of the distribution and the portions of the distributions representing contributions and earnings.

¹⁴ Sec. 529(c)(6).

¹⁵ Sec. 529(e)(3).

¹⁶ Sec. 529(c)(7). There is a \$10,000 limitation on the total amount of nontaxable cash distributions that

and equipment required for the participation of a beneficiary in an apprenticeship program registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act (29 U.S. Code section 50);¹⁷ and up to a \$10,000 lifetime maximum in payments of principal and interest on a beneficiary's (or a beneficiary's sibling's) student loan.¹⁸

Certain rules for contributions and distributions

A contribution to a qualified tuition program is treated as a completed gift for gift tax purposes (and, as a consequence, may benefit from the gift tax annual exclusion).¹⁹ If an individual's total contributions to a qualified tuition program during a year exceed the gift tax annual exclusion amount in that year, the individual may elect to take the total amount of the contributions into account for purposes of the annual exclusion ratably over the five-year period beginning with the year of the excess contributions.²⁰ An individual's interest in a qualified tuition program generally is excluded from the individual's gross estate for estate tax purposes.²¹

A distribution from a qualified tuition program that otherwise would be included in the income of the recipient of the distribution (for example, the beneficiary of the account) may be excluded under rules allowing, subject to limitations, tax-free rollovers to, among other alternatives, an ABL account of the beneficiary or of a member of the family of the beneficiary, a Roth IRA of the beneficiary, or the credit of another beneficiary of a qualified tuition program who is a member of the family of the beneficiary with respect to whom the distribution was made.²²

Description of Proposal

Additional elementary, secondary, and home school expenses treated as qualified higher education expenses for all purposes of section 529

The proposal provides that the following expenses in connection with the enrollment or attendance of a designated beneficiary at an elementary or secondary public, private, or religious school, or in connection with a homeschool, are qualified higher education expenses: tuition (as under present law), curriculum and curricular materials, books or other instructional materials, online educational materials, tuition for certain tutoring or educational classes outside of the

may be made in a taxable year from all qualified tuition programs with respect to a beneficiary to pay for that beneficiary's elementary or secondary school tuition. Sec. 529(e)(3)(A).

¹⁷ Sec. 529(c)(8).

¹⁸ Sec. 529(c)(9).

¹⁹ Sec. 529(c)(2)(A).

²⁰ Sec. 529(c)(2)(B).

²¹ Sec. 529(c)(4)(A).

²² Sec. 529(c)(3)(C), (E).

home, fees for certain tests, fees for dual enrollment in an institution of higher education, and certain educational therapies for students with disabilities.

Under the proposal, these elementary and secondary school expenses are considered qualified higher education expenses for all purposes of section 529, including the requirement that a qualified tuition program must provide safeguards to prevent contributions on behalf of a beneficiary that exceed the amount necessary to pay the beneficiary's qualified higher education expenses.

Certain postsecondary credentialing expenses treated as qualified higher education expenses for all purposes of section 529

The proposal treats a broad category of postsecondary credentialing expenses as qualified higher education expenses for all purposes of section 529. These "qualified postsecondary credentialing expenses" are tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary in a recognized "postsecondary credential program," or any other expense in connection with enrollment in or attendance at such a program if such expenses would, if incurred in connection with enrollment in or attendance at an eligible educational institution, be considered qualified higher education expenses before application of the proposal; fees for testing required to obtain or maintain a recognized postsecondary credential; and fees for continuing education if such education is required to maintain a recognized postsecondary credential.

For this purpose, a "recognized postsecondary credential program" means a program to obtain a recognized postsecondary credential if (a) such program is included on a list prepared under section 122(d) of the Workforce Innovation and Opportunity Act; (b) such program is listed in the Web Enabled Approval Management System ("WEAMS") Public directory (or a successor directory) maintained by the Department of Veterans Affairs; (c) an examination (developed or administered by an organization widely recognized as providing reputable credentials in the occupation) is required to obtain or maintain a postsecondary credential and the organization recognizes the program as providing training or education that prepares individuals to take the examination; or (d) such program is identified by the Secretary of the Treasury, after consultation with the Secretary of Labor, as being a reputable program for obtaining a recognized postsecondary credential.²³

A "recognized postsecondary credential" means any postsecondary employment credential that is industry recognized, any certificate of completion of an apprenticeship that is registered and certified with the Secretary of Labor under the National Apprenticeship Act, any occupational or professional license issued or recognized by a State or the Federal government, and any recognized postsecondary credential as defined under section 3 of the Workforce Innovation and Opportunity Act (29 U.S. Code section 3102).²⁴

²³ The WEAMS Public directory is a publicly-available, Internet-based search tool for identifying educational institutions that offer programs approved for veterans training.

²⁴ Under the proposal, a postsecondary employment credential that is industry recognized includes (i) any

Effective Date

The proposal is effective for distributions made after the date of enactment.

postsecondary employment credential issued by a program that is accredited by the Institute for Credentialing Excellence, the National Commission on Certifying Agencies, or the American National Standards Institute, (ii) any postsecondary employment credential that is included in the Credentialing Opportunities On-Line (“COOL”) directory of credentialing programs (or successor directory) maintained by the Department of Defense or by any branch of the Armed Services, and (iii) any postsecondary employment credential identified for purposes of this clause by the Secretary of the Treasury, after consultation with the Secretary of Labor, as being industry recognized.

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to have the following effect on Federal fiscal year budget receipts:

Fiscal Years [Millions of Dollars]											
<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>2033</u>	<u>2034</u>	<u>2025-29</u>	<u>2025-34</u>
-9	-13	-17	-17	-18	-19	-20	-20	-21	-22	-74	-177

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