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THE WHITE HOUSE
WASHINGTON

May 28, 1982

Bob,

Attached is the draft of the Tuition Tax Credit bill for putting into a proper format. The last five pages need the most attention. We have been told to have it ready by close of business today.

Bill Barr

"(d) SPECIAL RULES

"(1) TAX CREDIT NOT ALLOWED FOR AMOUNTS PAID TO RACIALLY DISCRIMINATORY EDUCATIONAL INSTITUTION.

"(A) No credit shall be allowed under subsection (a) for amounts paid to any educational institution

- (i) in a calendar year ⁱⁿ ~~during~~ which such institution has been declared by a United States district court, ^{and} in an action brought by the United States pursuant to subparagraph (C) of this paragraph, to ^{have - ed} follow a 'racially discriminatory policy', ^{and to} ^{pursuant to such policy} ^{and have discriminated against a person filing a petition under pursuant to this subsection.}
- (ii) in the two calendar years succeeding such judgment.

(2)

"(2) For purposes of this subsection, an institution follows a 'racially discriminatory policy' if it refuses, on account of race:

- (2)
- (i) to admit applicants as students;
- (ii) to admit students to the rights, privileges, programs, and activities generally made available to students by that institution; or
- (iii) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy does not include failing to

pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(A) ENFORCEMENT.

(A) To enforce this paragraph, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in paragraph (B) of this subsection, is authorized, upon finding good cause, to bring an action against an institution in the United States district court in the district in which such institution is located, seeking a declaratory judgment that the institution is following a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

(B) The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned. An action may be filed by the Attorney General no later than two years after receiving the petition. Exclusive authority to enforce, and to undertake activities connected with enforcing, the prohibition against following a racially discriminatory

policy under paragraph (A) of this subsection is vested in the Attorney General.

(C) No credit shall be disallowed under subparagraph (A) of this paragraph until all parties to the action have exhausted all appellate review.

"(3) STATUTE OF LIMITATIONS. If --

"(A) a credit is allowed to a taxpayer in any taxable year under subsection (a) for expenses paid to an institution --

"(i) in a calendar year during which the United States district court for the district in which such institution is located enters a judgment that such institution follows a racially discriminatory policy, as provided in subsection (d), or

"(ii) in either of the two calendar years immediately succeeding the calendar year specified in clause (i), and

"(B) that judgment has become final because --

"(i) the period within which the institution may seek review of that judgment has expired and the institution has failed to petition for review; or

"(ii) the judgment has been affirmed by a court of appeals and the period within which the institution may seek review of that decision has expired,

then the period within which a deficiency attributable to the disallowance of any credit allowed with respect to such expenses shall expire three years after such judgment becomes final within the meaning of subparagraph (B). Any such deficiency may be

assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment. Whenever a judgment against an educational institution has become final within the meaning of subparagraph (B), the Attorney General shall promptly notify the Secretary.

"(d) DEFINITIONS. For purposes of this section --

"(1) EDUCATIONAL INSTITUTION.

"(A) The term 'educational institution' means an elementary or secondary school which is a privately operated, not-for-profit, day or residential school and which is exempt from taxation under section 501(a) as an organization described in section 501(c)(3).

"(2) TUITION EXPENSES. The term 'tuition expenses' means tuition and fees required for the enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses; or

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution.

"(e) TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to

the recipients of such credits."

SEC. 4. CONFORMING AMENDMENT.

(a) The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 the following:
"Sec. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(c)(5)."

SEC. 5. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable year beginning after December 31, 1982, for tuition expenses incurred after that date.

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An institution is eligible if it:

(A) is exempt from taxation under 501(a) as an organization described in section 501(c)(3), and

(B) has not during the calendar year for which a tax credit is claimed had a final judgment entered against it under 42 U.S.C. 1981 for discriminating against a student or student applicant on account of race.

A bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore Federal legislation should recognize that —

(A) pluralism is one of the great strengths of American society, that diversity in education is an important contributor to that pluralism, and that nonpublic schools play an indispensable role in making that diversity possible;

(B) the existence and availability of alternatives to public education tends to strengthen public education through competition and improves the educational opportunities of all Americans;

(C) Americans should have equal opportunities to choose between the education offered by public schools and that available in private educational systems and should not

be compelled because of economic circumstances to accept education provided by government created and government operated school systems, and that to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(D) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the state and local taxes that go to support public schools, and that tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the primary and secondary level;

(E) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals at all income levels, that tax relief in the form of tuition tax credits creates the least possible danger of entanglement between government and the value structures of the various nonpublic school systems and of interference in the lives of individuals and families consistent with achieving these ends, and that tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(F) the tax revenue loss occasioned by a tuition tax credits for a child would be far exceeded by the cost to state and local taxpayers of educating the child at a public school.

Therefore, the primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for all Americans. The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

SECTION 3. CREDIT FOR TUITION EXPENSES.

2 / (a) IN GENERAL. Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44H. TUITION EXPENSES.

"(a) GENERAL RULE. In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by him during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6) or (9)) who has not yet attained the age of 20 at the close of the taxable year in which the tuition expenses are paid.

"(b) LIMITATIONS.

(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL. The amount of the credit allowable to a taxpayer under subsection (a) with respect to amounts paid on behalf of each dependent on whose behalf a credit is claimed shall not exceed--

"(A) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

"(B) \$300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

"(C) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

(2) MARRIED INDIVIDUALS. In the case of a husband and wife who file a joint return under section 6013, the maximum dollar amounts specified under this subsection (b) shall apply to the joint return. In the case of a married individual filing a separate return, subsection (b) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. Notwithstanding any other provision of this section, the credit allowable under

this subsection (b) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return).

(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

(2) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

(3) 2.0 percent for the first taxable year of the taxpayer ending on or after December 31, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES.

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. The amounts deemed paid by the taxpayer under subsection (a) as tuition expenses shall not include any amounts which were received by the taxpayer or his dependent as

(i) a scholarship or fellowship grant
(within the meaning of section 117(a)(1))
which is not includible in gross income under
section 117;

(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

(iii) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEDUCTION. No deduction or credit shall be allowed under any other section of this chapter for any tuition

expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

"(4) TAX CREDIT NOT ALLOWED FOR AMOUNTS PAID TO RACIALLY DISCRIMINATORY EDUCATIONAL INSTITUTION.

"(A) No credit shall be allowed under subsection (a) for amounts paid to any educational institution in a calendar year during which such institution has been declared by a United States district court, in an action brought by the United States pursuant to subparagraph (C) of this paragraph, to follow a 'racially discriminatory policy', and in the two calendar years succeeding such judgment.

"(B) (i) For purposes of this subsection, an institution follows a 'racially discriminatory policy' if it refuses, on account of race:

(a) to admit applicants as students;

(b) to admit students to the rights, privileges, programs, and activities generally made available to students by that institution; or

(c) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy does not include failing to pursue or achieve any racial quota, proportion, or representation in the student body.

(ii) The term 'race' shall include color or national origin.

"(C) (i) To enforce this paragraph, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in subparagraph (B) of this paragraph, is authorized, upon finding good cause, to bring an

action against an institution in the United States district court in the district in which such institution is located, seeking a declaratory judgment that the institution is following a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

(ii) The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned. An action may be filed by the Attorney General no later than two years after receiving the petition. Exclusive authority to enforce, and to undertake activities connected with enforcing, the prohibition against following a racially discriminatory policy under subparagraph (A) of this paragraph is vested in the Attorney General.

(iii) A tax credit shall be disallowed during the entire calendar year in which a district court judgment that the institution follows a racially discriminatory policy has been entered and during the two immediately succeeding calendar years.

(4)
E
~~(iv)~~ No credit shall be disallowed under
2
~~subparagraph (A) of this paragraph until all parties to the~~

*The judgment in the
brought under section 7408*

action have exhausted all appellate review. *← has becoming final within the
meaning of paragraph
(5)(B).*

"(5) STATUTE OF LIMITATIONS. -- If --

"(A) a credit is allowed to a taxpayer in any taxable year under subsection (a) for expenses paid to an institution --

"(i) in a calendar year during which the United States district court for the district in which such institution is located enters a judgment that such institution follows a racially discriminatory policy, as provided in paragraph (4) of subsection (c), or

"(ii) in either of the two calendar years immediately succeeding the calendar year specified in clause (i), and

"(B) that judgment has become final because --

"(i) the period within which the institution may seek review of that judgment has expired and the institution has failed to petition for review; or

"(ii) the judgment has been affirmed by a court of appeals and the period within which the institution may seek review of that decision has expired,
then the period within which ^{may be assessed} a deficiency attributable to the disallowance of any credit allowed with respect to such expenses shall expire three years after such judgment becomes final within the meaning of subparagraph (B). Any such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment. Whenever a judgment against an educational institution has become final

within the meaning of subparagraph (B), the Attorney General shall promptly notify the Secretary.

"(d) DEFINITIONS. For purposes of this section --

"(1) EDUCATIONAL INSTITUTION.

"(A) The term 'educational institution' means an elementary or secondary school which is a privately operated, not-for-profit, day or residential school and which is exempt from taxation under section 501(a) as an organization described in section 501(c)(3).

"(2) TUITION EXPENSES. The term 'tuition expenses' means tuition and fees required for the enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses; or

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution.

"(e) TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits."

SEC. 4. CONFORMING AMENDMENT.

(a) The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting

immediately before the item relating to section 45 the following:

"Sec. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(c)(5)."

SEC. 5. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable year beginning after December 31, 1982, for tuition expenses incurred after that date.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 1, 1982

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: TUITION TAX CREDIT DRAFT BILL

On Friday I requested the General Counsel's office at Treasury to review the draft bill -- purely from the standpoint of its draftsmanship -- to ensure that it was technically correct. The General Counsel's office deferred to Buck Chapoton's shop.

Chapoton was not available, but his subordinates indicated in his absence that nothing further would be done in the way of commenting on the bill until Chapoton had a chance to raise his concerns at the White House this week. (Chapoton had told his staff that he had been assured by Ann Fairbanks that he would have such an opportunity on Friday, June 4th.)

I informed Roger and Ann of these developments, and Ann said she would discuss the matter with Chapoton over the weekend. Yesterday (Monday) Ann reported to me that, over the weekend, Chapoton had told her that his concerns were not technical, but substantive. Ann was unclear as to whether his problem related to the exhaustion-of-appeals provision or to the 3-year-disallowance provision.

The bill is an acceptable and defensible document for the purposes it is designed to accomplish, and so far it has met with the strong approval of the private school folks. If we had to, we could send it up this week. Roger and I were informed, however, that a decision has been made to defer sending the bill to the Hill until the week of June 14th.

Right now, I am taking the following action:

1. I am asking people from Chapoton's shop to come over today and assist in putting the bill in a technically correct format.

2. I am making some technical changes to the remedy provisions of the bill in the nature of "fine-tuning". These will not alter the substance of the bill, and have been cleared by Morton Blackwell and representatives of the private school community.

3. I am preparing a section-by-section analysis and transmittal letters.

4. I will get the whole package to you no later than Friday.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

June 3, 1982

FOR: KENNETH CRIBB

FROM: GARY L. BAUER
WILLIAM P. BARR

SUBJECT: Hill Contact by Treasury on Tuition Tax Credits

We have become aware that there has been contact between the Treasury Department and Capitol Hill on the sensitive issue of the discrimination language in our proposed tuition tax credit legislation.

Ms. Jackie Levinson, Associate Tax Legislation Counsel in the Office of Tax Policy, has in recent days helped us with technical aspects of the language in the bill. While doing this, she has made clear that her cooperation in no way should be construed to mean that Buck Chapoton, her superior, endorsed the specifics in our proposal. Elaborating on this point, Ms. Levinson indicated that Mr. Chapoton had talked with Bob Lightizer, Chief Counsel of the Finance Committee. Lightizer indicated that the Committee did not want the racial issue reopened and that they wanted simply a requirement that a school be exempt under 501(c)(3), or at the very least, no departure from the Bob Jones language.

Ms. Levinson's report of attitudes in the Committee differs sharply from what we have been told by our Legislative Affairs office. In view of this, Michael Uhlmann has asked Robert Thompson in that office to confirm his earlier report that the Bob Jones language would kill the legislation.

It is troublesome to have individual departmental officials discussing such sensitive policy matters with Hill staffers without first coordinating with the White House legislative staff.

cc: Edwin L. Harper
Roger Porter

A bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore, Federal legislation should recognize that:

(A) pluralism is one of the great strengths of American society, that diversity in education is an important contributor to that pluralism, and that nonpublic schools play an indispensable role in making that diversity possible;

(B) the existence and availability of alternatives to public education tend to strengthen public education through competition and improves the educational opportunities of all Americans;

(C) Americans should have equal opportunities to choose between the education offered by public schools and that available in private educational systems and should not be compelled because of economic circumstances to accept education provided by government created and government operated school systems, and that to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(D) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the state and

local taxes that go to support public schools, and that tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the elementary and secondary level;

(E) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals, that tax relief in the form of tuition tax credits creates the least possible danger of interference in the lives of individuals and families consistent with achieving these ends, and that tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(F) the tax revenue loss occasioned by a tuition tax credit for a child would be ^{small compared to} ~~far exceeded by~~ the cost to state and local taxpayers of educating the child at a public school.

Therefore, the primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for Americans. The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

SEC. 3. CREDIT FOR TUITION EXPENSES.

Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44H. CREDIT FOR TUITION EXPENSES.

"(a) General Rule. -- In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by the taxpayer during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6), or (9)) who has not attained the age of 20 at the close of the taxable year in which the tuition expenses are paid and with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

"(b) Limitations. --

"(1) Maximum Dollar Amount Per Individual. -- The amount of the credit allowable to a taxpayer under subsection (a) with respect to tuition expenses paid on behalf of each dependent shall not exceed --

"(A) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

"(B) \$300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

"(C) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

"(2) Phase-out of Credit Above Certain Adjusted Gross Income Amounts. -- The maximum amount specified in paragraph

(1) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return) --

"(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

"(B) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

"(C) 2.0 percent for each taxable year of the taxpayer beginning on or after January 1, 1985.

"(c) Special Rules. --

"(1) Adjustment for Scholarships and Financial Assistance. -- Tuition expenses paid by the taxpayer shall be reduced by any amounts which were paid to the taxpayer or his dependents as --

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

"(B) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

"(C) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) Disallowance of Credited Expenses as Deduction. -- No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(d) Tax Credit Not Allowed for Amounts Paid to Racially Discriminatory Institutions. --

"(1) Required Annual Statements. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution during a calendar year unless, at the end of such calendar year, the educational institution files with the Secretary (in such manner as the Secretary shall by regulation prescribe) a statement, subject to the penalties for perjury, that such institution has not followed a racially discriminatory policy during such calendar year.

"(2) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year during which the Attorney General commenced the action pursuant to section 7408, and

"(B) in the two calendar years immediately succeeding the year specified in subparagraph (A).

"(3) Definition. -- For purposes of this subsection, an educational institution follows a 'racially discriminatory policy' if it refuses, on account of race --

(A) to admit applicants as students;

(B) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy shall not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(4) Time of Disallowance. -- No credit shall be disallowed under paragraph (2) until the judgment against the educational institution in the action brought under section 7408 has become final. A judgment becomes final within the meaning of this paragraph when all parties to the action have exhausted all appellate review.

"(5) Statute of Limitations. -- If a credit is disallowed under paragraph (2), the period for assessing a deficiency attributable to the disallowance of such credit shall not expire before the expiration of 3 years from the date the judgment becomes final within the meaning of paragraph (4). Any such deficiency may be assessed before

the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(6) Enforcement Responsibility. -- Exclusive authority to enforce the prohibition against following a racially discriminatory policy under this subsection, or to undertake activities connected with enforcing this subsection, is vested in the Attorney General. Under this subsection, the Secretary has authority solely to receive the statements referred to in paragraph (1); to disallow credits for amounts paid to an educational institution which has failed to file such a statement as provided in paragraph (1); and to disallow credits for amounts paid to an educational institution against which a final judgment has been entered in an action under section 7408 as provided in paragraphs (2) and (4).

"(e) Definitions. -- For purposes of this section --

"(1) Educational Institution. -- The term 'educational institution' means a school which ~~is~~

"(i) ~~an educational organization described in section 170(b)(1)(A)(ii) that~~ provides a full-time program of elementary or secondary education;

"(ii) ^{is} a privately operated, not-for-profit, day or residential school; and

"(iii) ^{is} exempt from taxation under section 501(a) as an organization described in section 501(c)(3), including church-operated schools to which

subsections (a) and (b) of section 508 do not apply.

"(2) Tuition Expenses. -- The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses;

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; or

"(D) education above the twelfth-grade level."

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

"(a) In General. -- Upon petition by a person who has been discriminated against under a racially discriminatory policy, the Attorney General is authorized, upon finding good cause, to bring an action against an educational institution in the United States district court in the district in which the educational institution is located, seeking a declaratory judgment that the

educational institution has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

"(b) Time for Filing Petition. -- The petition shall be filed with the Attorney General within 180 days after the date on which the act of racial discrimination is alleged to have been committed against the person filing the petition.

"(c) Notification and Opportunity to Comment. -- Upon receipt of the petition, the Attorney General shall promptly notify the educational institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned.

"(d) Time for Bringing Action. -- An action may be filed by the Attorney General no later than 1 year after receiving the petition.

"(e) Definitions. -- When used in this section, the terms 'educational institution' and 'racially discriminatory policy' shall have the same meaning as assigned to such terms in section 44H."

SEC. 5. TECHNICAL AND CONFORMING AMENDMENT.

(a) The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 the following:

"SEC. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(d)(5)."

(c) The table of sections for subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to civil actions by the United States) is amended by striking out the item relating to section 7408 and inserting in lieu thereof:

"Sec. 7408. Declaratory judgment relating to racially discriminatory policies of schools.

"Sec. 7409. Cross references."

SEC. 6. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits.

SEC. 7. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/9/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI
 SUBJECT: Hill Contact by Treasury on Tuition Tax Credits

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
✓ BARR	☐	☒	D. LEONARD	☐	☐
BAUER	☐	☒	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	Ken Cribb	☐	☒
FERRARA	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
MALOLEY	☐	☐		☐	☐
SMITH	☐	☐		☐	☐
UHLMANN	☐	☒		☐	☐
ADMINISTRATION	☐	☐		☐	☐

Remarks:

I talked to Chapotan in general terms. He said no one from OPD had talked to him directly. I asked him to call to discuss substance with Mike Uhlmann.

Please return this tracking sheet with your response.

Edwin L. Harper
 Assistant to the President
 for Policy Development
 (x6515)

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

June 3, 1982

70
FOR: KENNETH CRIBB
FROM: GARY L. BAUER
WILLIAM P. BARR

XC Mike Uhlman.

SUBJECT: Hill Contact by Treasury on Tuition Tax Credits

We have become aware that there has been contact between the Treasury Department and Capitol Hill on the sensitive issue of the discrimination language in our proposed tuition tax credit legislation.

Ms. Jackie Levinson, Associate Tax Legislation Counsel in the Office of Tax Policy, has in recent days helped us with technical aspects of the language in the bill. While doing this, she has made clear that her cooperation in no way should be construed to mean that Buck Chapoton, her superior, endorsed the specifics in our proposal. Elaborating on this point, Ms. Levinson indicated that Mr. Chapoton had talked with Bob Lightizer, Chief Counsel of the Finance Committee. Lightizer indicated that the Committee did not want the racial issue reopened and that they wanted simply a requirement that a school be exempt under 501(c)(3), or at the very least, no departure from the Bob Jones language.

Ms. Levinson's report of attitudes in the Committee differs sharply from what we have been told by our Legislative Affairs office. In view of this, Michael Uhlmann has asked Robert Thompson in that office to confirm his earlier report that the Bob Jones language would kill the legislation.

It is troublesome to have individual departmental officials discussing such sensitive policy matters with Hill staffers without first coordinating with the White House legislative staff.

cc: Edwin L. Harper
Roger Porter

I talked to Chapoton in general terms. He said no one from OPD had talked to him directly. I asked him to call to discuss substance w Mike U.

14 June 1982 DRAFT

A bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore, Federal legislation should recognize that:

(A) pluralism is one of the great strengths of American society, that diversity in education is an important contributor to that pluralism, and that nonpublic schools play an indispensable role in making that diversity possible;

(B) the existence and availability of alternatives to public education tend to strengthen public education through competition and to improve the educational opportunities of all Americans;

(C) Americans should have equal opportunities to choose between the education offered by public schools and that available in private educational systems and should not be compelled because of economic circumstances to accept education provided by government created and government operated school systems, and that to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(D) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the state and

local taxes that go to support public schools, and that tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the elementary and secondary level;

(E) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals, that tax relief in the form of tuition tax credits creates the least possible danger of interference in the lives of individuals and families consistent with achieving these ends, and that tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(F) the tax revenue loss occasioned by a tuition tax credit for a child would be small compared to the cost to state and local taxpayers of educating the child at a public school;

(G) equality of educational opportunity is the policy of the United States, and the tax relief afforded by this legislation should not be used to promote racial discrimination.

Therefore, the primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for Americans. The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

SEC. 3. CREDIT FOR TUITION EXPENSES.

Subpart A of part IV of subchapter A of chapter 1 of the

Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:
"SEC. 44H. CREDIT FOR TUITION EXPENSES.

"(a) General Rule. -- In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by the taxpayer during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6), or (9)) who has not attained the age of 20 at the close of the taxable year in which the tuition expenses are paid and with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

"(b) Limitations. --

"(1) Maximum Dollar Amount Per Individual. -- The amount of the credit allowable to a taxpayer under subsection (a) with respect to tuition expenses paid on behalf of each dependent shall not exceed --

"(A) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

"(B) \$300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

"(C) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

"(2) Phase-out of Credit Above Certain Adjusted Gross Income Amounts. -- The maximum amount specified in paragraph (1) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return) --

"(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

"(B) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

"(C) 2.0 percent for each taxable year of the taxpayer beginning on or after January 1, 1985.

"(c) Special Rules. --

"(1) Adjustment for Scholarships and Financial Assistance. -- Tuition expenses paid by the taxpayer shall be reduced by any amounts which were paid to the taxpayer or his dependents as --

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

"(B) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

"(C) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other

than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) Disallowance of Credited Expenses as Deduction. -- No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(d) Tax Credit Not Allowed for Amounts Paid to Racially Discriminatory Institutions. --

"(1) Required Annual Statements. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution during a calendar year unless, at the end of such calendar year, the educational institution files with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) a statement, subject to the penalties for perjury, that

(A) declares that such institution has not followed a racially discriminatory policy during such calendar year; and

(B) indicates whether the Attorney General has brought an action against such institution under section 7408 during such calendar year or either of the two preceding calendar years.

On or before January 31 of the calendar year succeeding the

calendar year to which the statement relates, the institution shall furnish a copy of the statement to all persons who paid tuition expenses to the institution in the calendar year to which the statement relates. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year unless the taxpayer attaches to the return on which the taxpayer claims the credit with respect to such calendar year a copy of the statement specified in this paragraph.

"(2) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year during which the Attorney General commenced the action pursuant to section 7408, and

"(B) in the two calendar years immediately succeeding the year specified in subparagraph (A).

"(3) Definition. -- For purposes of this subsection, an educational institution follows a 'racially discriminatory policy' if it refuses, on account of race --

(A) to admit applicants as students;

(B) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) to allow students to participate in its scholarship, loan, athletic, or other programs. A racially discriminatory policy shall not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(4) Time of Disallowance. -- No credit shall be disallowed under paragraph (2) until the judgment against the educational institution in the action brought under section 7408 has become final. A judgment becomes final within the meaning of this paragraph when all parties to the action have exhausted all appellate review.

"(5) Statute of Limitations. -- If a credit is disallowed under paragraph (2), the period for assessing a deficiency attributable to the disallowance of such credit shall not expire before the expiration of 3 years from the date the judgment becomes final within the meaning of paragraph (4). Any such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(6) Enforcement Responsibility. -- Exclusive authority to enforce the prohibition against following a racially discriminatory policy under this subsection, or to undertake activities connected with enforcing this subsection, is vested in the Attorney General. Under this subsection, the Secretary has authority solely to receive the statements

referred to in paragraph (1); to disallow credits for amounts paid to an educational institution which has failed to file such a statement as provided in paragraph (1); to disallow a credit in the case of a taxpayer who fails to comply with the procedures prescribed by the Secretary for claiming the credit; and to disallow credits for amounts paid to an educational institution against which a final judgment has been entered in an action under section 7408 as provided in paragraphs (2) and (4).

"(e) Definitions. -- For purposes of this section --

"(1) Educational Institution. -- The term 'educational institution' means a school that

"(i) provides a full-time program of elementary or secondary education;

"(ii) is a privately operated, not-for-profit, day or residential school; and

"(iii) is exempt from taxation under section 501(a) as an organization described in section 501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply.

"(2) Tuition Expenses. -- The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses;

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; or

"(D) education above the twelfth-grade level."

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

"(a) In General. -- Upon petition by a person who alleges that he has been discriminated against under a racially discriminatory policy of an educational institution, the Attorney General is authorized, upon finding good cause, to bring an action against the educational institution in the United States district court in the district in which the educational institution is located, seeking a declaratory judgment that the educational institution has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

"(b) Time for Filing Petition. -- The petition shall be filed with the Attorney General within 180 days after the date on which the act of racial discrimination is alleged to have been committed against the person filing the petition.

"(c) Notification and Opportunity to Comment. -- Upon receipt of the petition, the Attorney General shall promptly notify the educational institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned.

"(d) Time for Bringing Action. -- An action may be filed by the Attorney General no later than 1 year after receiving the petition.

"(e) Definitions. -- When used in this section, the terms 'educational institution' and 'racially discriminatory policy' shall have the same meaning as assigned to such terms in section 44H."

SEC. 5. TECHNICAL AND CONFORMING AMENDMENT.

(a) The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 the following: "SEC. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(d)(5)."

(c) The table of sections for subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to civil actions by the United States) is amended by striking out the item relating to section 7408 and inserting in lieu thereof:

"Sec. 7408. Declaratory judgment relating to racially discriminatory policies of schools.

"Sec. 7409. Cross references."

SEC. 6. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits.

SEC. 7. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.