Amendments To Modify The Anti-Discrimination Provisions of the Tuition Tax Credit Bill

1. New Eligibility Requirement

   The amended bill would contain a provision requiring an eligible school to publish a statement of its nondiscriminatory policy in any published by-laws, brochures, admissions materials, and other published materials.

2. Annual Statement Under Oath is retained

   The amended bill would retain the original requirement that each school file with the Secretary of the Treasury and send to parents an annual statement under oath that the school has not discriminated on the basis of race during the calendar year.

3. Changes in the Triggering of the Declaratory Judgment Procedure and Investigation by the Attorney General

   The original bill provided that to trigger an investigation by the Attorney General, a person who had been discriminated against by a school had to file a complaint.

   The amended provision would allow a petition to be filed by any person, provided that person alleges with specificity:

   (a) an act of discrimination, or

   (b) a communication expressing a discriminatory policy.

   The petition must be filed within one year of the act or communication described in the petition.

   Under the original bill, the Attorney General was authorized to file a declaratory judgment action whenever he finds good cause, upon investigation, to believe that a school follows a racially discriminatory policy. Under the new bill, the Attorney General would be authorized and directed to file suit under such circumstances, within one year of receiving the petition.

   Once the Attorney General files suit, he must show that the school is following a racially discriminatory policy, but under the amended bill he is not bound or limited by the allegations contained in the petition that triggered the suit. The Attorney General must show actual evidence of racial discrimination occurring within the two year period preceding the filing of his complaint, not mere failure to meet a quota or numerical standard. Under the original bill the Attorney General was required to show that an act of discrimination against a student has occurred. Under the amended bill the Attorney General could also prevail upon showing that a statement had been made communicating a discriminatory policy or upon showing a pattern of conduct evidencing intent to maintain a discriminatory policy.

   The original bill contains a provision allowing the Attorney General to enter into a settlement agreement with schools against which complaints have been received. This provision would be retained. Upon the violation of a settlement agreement, the Attorney General would be authorized and directed to seek a declaratory judgment against the school.

The amended bill would require regular reports by the Attorney General to Congress concerning the disposition of petitions and actions filed pursuant therto.

4. Reinstatement of Credits

Under the original bill, a school adjudged to be discriminatory became automatically re-eligible for credits after a three-year period of disallowance.

The amended bill would impose an indefinite period of disallowance, which continues until the school shows in court that it no longer discriminates.

The amended bill would provide that the school may not move to reinstate its eligibility for credits until it has maintained a clean record for at least one year following the judgment against it.

The school must make a prima facie showing that it has ceased its discriminatory policy, communicated its change in policy to the community, and complied with various publication requirements. The school's eligibility would then be restored unless the Attorney General established that the school's showing was false , or that the school was continuing to follow a discriminatory policy.

5. Stay of Penalties Pending Exhaustion of Appeals

The original bill stayed the disallowance of credits until all appeals have been exhausted. Under the amended bill, credits would be disallowed immediately upon entry of judgment by the district court against a school.

6. Commencement of Penalty Period

The original bill provided that disallowance of credits would not be imposed until final appeal, but that when imposed it would be retroactive to the year in which the complaint was filed.

Under the amended bill, the disallowance period would begin in the calendar year the district court judgment is entered. Tax returns filed for previous years will generally not, therefore, have to be reopened.

7. Enforcement Responsibility

The amended bill would direct the Secretary of the Treasury to provide the Attorney General all information relevant to the Attorney General's investigations and actions under the bill. The Secretary of the Treasury would also enforce the amended bill's new requirement disallowing eligibility for schools failing to publicize their nondiscriminatory policy. Exclusive responsibility to investigate and determine whether a school is following a discriminatory policy under the tuition tax credit bill, and to commence declaratory judgment prodedings, will remain with the Attorney General.

8. Attorneys Fees

The amended bill would add a provision allowing the award of reasonable attorneys fees for schools prevailing in a declaratory judgment action brought by the Attorney General under the bill.

9. Statute of Limitations

The statute of limitations for taxpayers to claim tax refunds would be extended in the event a district court declaratory judgment against a school was reversed on appeal.

The statute of limitations for assessing deficiencies against individual taxpayers claiming credits would be extended in the event that a district court entered a stay of its declaratory judgment against a school pending appeal. In the event a stay is entered and the decision is affirmed, the period of disallowance would commence with the year the district court judgment was entered.

30 NOV 1982

NATIONAL COALITION FOR TUITION TAX CREDITS

1435 G Street, N.W., Suite 854, Washington, D.C. 20005
Telephone: (202) 638-6469

November 23, 1982

The Honorable Robert Dole
Dirksen Senate Office Building #2213
Washington, D.C. 20510

Dear Senator Dole:

The Coalition for Tuition Tax Credits met on Tuesday, November 16, to discuss the future of legislation supportive of this issue. At a previous meeting it had been decided that it was not feasible to seek action in the "lame-duck" session. At the 11/16 meeting it was therefore decided that there are some options open to us which we would like to discuss with you at the earliest possible date. These options center around two basic areas: which BILL to support, and what STRATEGY to follow to enact this legislation.

The following is a brief outline of the options as we see them at this time. We ask you to give them your thoughtful attention prior to our meeting with you.

BILL OPTIONS

1. Original bill as presented by the White House.

   (Pro- Leaves room for negotiations.)
   (Con- Leaves open possibility of more dangerous amendments being added.)

2. White House compromise to the Bradley amendments.

   (Pro- Less possibility of dangerous amendments being added because compromises have already been made.)
   (Pro- Christian School Community will still accept this bill.)
   (Con- No room for further negotiations.)

3. S 2673 as amended and reported out of the Senate Finance Committee.

   (Pro- Already passed by the Finance Committee.)
   (Con- Unaccetable to conservative elements in the coalition because of extensive government involvement, i.e. compulsory attendance laws and holding the issue hostage to the Bob Jones University case.)

STRATEGY OPTIONS:

1. Aggressively pursue enactment of legislation through normal channels: Committee hearings in Senate and House, floor action, conference committee, etc.

   (Pro- Straight up/down vote on the issue itself.)
   (Con- Speaker of the House could stall further action.)
   (Con- A filibuster could kill the bill.)

2. Attach tuition tax credit legislation to a "must pass" bill on the floor of the Senate.

   (Pro- In 1981, President Reagan pledged to include TTC in the second Administration tax bill.)
   (Pro- Less possibility of a successful filibuster.)
   (Pro- House Speaker cannot prevent floor action.)
   (Pro- Bill's integrity can be assured in the Senate through first and second degree amendments.)
   (Con- May get bogged down with original bill.)

Thank you, Senator, for giving this matter your time and consideration. We appreciate all that you have already done for the cause of parents' rights in education.

Again, we think that it is important that we meet with you in the very near future, prior to our meeting with the Administration in mid December. Please contact us through the Coalition number given above.

Sincerely,

Sister Renee Oliver

Sister Renee Oliver
on behalf of Members of the Coalition:

Coalitions for America

Pro-Family Coalition

National Pro-Life PAC

Accelerated Christian Education

United States Catholic Conference

Council on American Private Education

Citizens for Ed. Freedom

Moral Majority

Catholic League

Knights of Columbus

National Catholic Education Association

Assn. of Christian Schools International

Nat. Christian Action Coalition

cc: Edwin Meese
Donald Regan
Terrel Bell
Charles O'Malley
Jack Burgess

CEF
PARENTS' RIGHTS IN EDUCATION

CITIZENS FOR EDUCATIONAL FREEDOM

SUITE 854 WASHINGTON BUILDING
WASHINGTON, D.C. 20005
15TH STREET & NEW YORK AVE., N.W.
AREA CODE 202-638-6423

The attached bill was originally drafted by Msgr. Spires but has been rewritten to include changes suggested by Attorney William Ball on December 23, 1982.

THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983

1. A bill to amend the Internal Revenue Code to provide a tuition tax credit for one-half of tuition payments made to an educational institution for the primary or secondary education of taxpayer's dependents, up to a maximum per student of $100.00 in 1983, $200.00 in 1984, $300.00 in 1985, and thereafter.

2. The maximum credit shall be allowed only when the adjusted gross income of the taxpayer does not exceed $40,000.00 for the taxable year ($20,000.00 for a married individual filing a separate return); one-half credit will be allowed when the adjusted gross income is above $40,000.00 ($20,000.00 but not greater than $60,000.00, $30,000.00); no credit is allowed when the gross adjusted income exceeds $60,000.00).

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

4. EDUCATIONAL INSTITUTION. The term "educational institution" means a school that

(i) provides a full-time program for students in grades 1 through 12, or any part thereof, to children of compulsory school attendance age.

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

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

5. The amendments made by this Act shall not take effect until the Attorney General certifies to the Secretary of the Treasury that, pursuant to-

(1) an Act of Congress which has been enacted, or
(2) a final decision of the United States Supreme Court,

the Internal Revenue Code of 1954 prohibits the granting of tax exemption under section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 24, 1983

FOR: RICHARD G. DARMAN

THROUGH: EDWIN L. HARPER

FROM: WILLIAM P. BARR WPB

SUBJECT: Addition to Tuition Tax Credit Legislation

Attached is a clean copy of the tuition tax credit legislation. It is identical to the version you circulated Friday, except for the insertion of subsection (c) at the very end of the bill -- the last 11 lines.

This provision was in the original bill as reported by the Senate Finance Committee last Congress. Treasury first asked that it be deleted from the bill to be transmitted this week, but has now changed its mind and has asked that it be inserted again. It is a technical change relating to the mechanics of claiming the credit and has no significant policy implications.

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

(1) Racial Discrimination Prohibited. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution that is found, pursuant to the procedures set forth in this sub-section, to follow a racially discriminatory policy.

"(2) 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.

"(3) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, and such declaratory judgment is not stayed, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year in which the declaratory judgment under section 7408 was entered against the educational institution, and

"(B) in succeeding calendar years until such time as an order modifying the declaratory judgment and reinstating credits is entered pursuant to subsection (f) of section 7408.

"(4) 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) attests that such institution has complied with the requirements of sub-section (e)(1)(iv) during such calendar year;

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

(C) indicates whether a declaratory judgment has been entered against such institution under section 7408 and has not been vacated pursuant to sub-section (f) of section 7408.

On or before January 31 of the calendar year following 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.

(5) Enforcement Responsibility. -- Under this section, the Attorney General has exclusive authority to investigate and to determine whether an educational institution is following a racially discriminatory policy and to commence a declaratory judgment action under section 7408. Upon request of the Attorney General or upon his own motion, the Secretary shall supply the Attorney General with all information in the possession of the Secretary relevant to such investigation, determination, or action.

"(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;

"(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; and

"(iv) to the extent it otherwise publishes by-laws, advertisements, admission application forms and other such publications, includes therein (as the Secretary shall by regulation prescribe) a statement that it does not discriminate against student applicants or students on the basis of race.

"(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. -- Whenever the Attorney General receives a petition in accordance with paragraph (b), the Attorney General is authorized and directed, upon finding good cause to believe that an educational institution is following a racially discriminatory policy, 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.

"(b) Petition. -- Any person may file a petition under sub-section (a). The petition must allege with specificity that

(1) a named educational institution has, pursuant to a racially discriminatory policy, discriminated against a named student applicant or student within one year preceding the filing of the petition; or

(2) the educational institution made a statement, within one year preceding the filing of the petition, communicating an intent to follow a racially discriminatory policy.

"(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 filing an action, the Attorney General shall give the institution a fair opportunity to comment on allegations made against it and to show that a racially discriminatory policy does not exist or has been abandoned. Prior to and in lieu of filing an action, the Attorney General may, at his discretion, enter into a settlement agreement with the educational institution if he finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy. No petition need be filed for the Attorney General to initiate action to enforce the terms of such settlement agreement.

"(d) Required Showing. -- In an action under this section, no finding that a school is following a racially discriminatory policy shall be made unless the Attorney General establishes

(1) that the institution has, pursuant to such policy, taken an action discriminating against a student applicant or student within the two years preceding commencement of the action; or

(2) that the institution has, within the two years preceding commencement of the action, made a statement communicating an intent to follow a racially discriminatory policy against student applicants or students; or

(3) that the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

"(e) Reinstatement of Credits. --

(1) If a district court enters a declaratory judgment against an educational institution under this section, the district court shall retain jurisdiction of the case. After

one (1) year has elapsed from the date of judgment, and at any time thereafter, the educational institution may file with the district court a motion to reinstate credits. Such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has changed its previous racially discriminatory policy;

(B) describing with specificity the ways in which the educational institution has taken reasonable steps to communicate its policy of non-discrimination to students, to faculty, and school administrators, and to the public in the area it serves;

(C) averring that the educational institution has not discriminated against an applicant or student pursuant to a racially discriminatory policy during the preceding year; and

(D) averring that the educational institution has complied with the requirements of section 44 H(e)(1)(iv).

(2) When an educational institution has filed a motion complying with paragraph (1), the court shall enter an order modifying the prior judgment against the institution and reinstating credits for tuition payments to the educational institution, unless the Attorney General establishes that

(A) the institution has not in fact stopped following its previous discriminatory policy;

(B) the institution has discriminated against an applicant or student pursuant to a racially discriminatory policy within the preceding year;

(C) the institution has made statements communicating an intent to follow a racially discriminatory policy within the preceding year; or

(D) the institution has not, in fact, complied with the publications requirements of sub-paragraphs (B) and (D) of paragraph (1).

"(f) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court shall award the institution costs and attorney's fees in such action.

"(g) 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."

"(h) Statute of Limitations. -- If, for any reason, a judgment of the district court against an educational institution is stayed and is subsequently affirmed on appeal, credits allowed for tuition payments to such institution for taxable years dating back to the year in which the district court judgment was entered shall be disallowed.

"(1) The period for assessing a deficiency attributable to such disallowance of a credit shall not expire before the expiration of 3 years from the date of the appellate decision affirming the district court judgment. Any such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(2) If a district court judgment against an educational institution is reversed on appeal, taxpayers for whom credits have been precluded by such judgment shall be entitled to file amended returns for tax years dating back to and including the year in which the district court judgment was entered.

DRAFT

Letter to the President of the Senate and the Speaker of the House Transmitting Proposed Legislation.

Dear Mr. President: (Mr. Speaker:)

I am herewith transmitting to the Senate (House of Representatives) proposed legislation entitled "The Educational Opportunity and Equity Act of 1983." This bill would provide for increased diversity in educational opportunity by providing tax relief for parents who choose to send their children to nonpublic schools. Substantially the same bill was favorably reported by the Senate Finance Committee late in the 97th Congress. I call upon the 98th Congress to give enactment of this legislation the highest priority.

Diversity in educational opportunity has been one of the great strengths of our nation. It is a foundation of our pluralistic society and essential to a nation which places a high value on individual freedom.

We are justly proud of our public schools, which now offer a free education through the primary and secondary school levels to all American children willing to take advantage of it. At the same time, we must remember the important role that has been played since the beginning of our nation by the diverse nonpublic schools which also offer an education to American children. Now, as they did prior to the establishment of our public school system, parents cherish their ability to choose from a wide range of educational opportunities for their children. It is of great importance to the continued vitality of our society that parents have a meaningful choice between public education and the many forms of private education that are available.

It is also important that there be innovation and experimentation in education. The existence of many private, as well as public, schools assures that new and possibly more effective teaching approaches will not go untested. It is also important that the differing needs and demands of students and their parents be met. Parents who, for whatever reason, are not satisfied by the education available in their local public schools should be able to seek an education better suited to their children elsewhere. Furthermore, the existence of a viable private alternative should maintain educational standards and meet student needs.

As we are all aware, the cost of education, both public and private, has risen dramatically in recent years. We all bear the burden of the rising costs of public education through state and local taxation, directly or indirectly. But those parents who wish their children to attend nonpublic schools must also bear the additional burden of paying private school tuition. This additional cost has always severely limited the ability of lower-income families to choose the nonpublic educational alternative for their children. Rising costs are now putting private schools beyond the reach of a growing number of middle-income Americans as well. If we are to provide a meaningful choice for those for whom it is in danger of becoming an illusion, we must find a way to lighten the "double burden" these families bear.

We must also bear in mind that private schools do more than offer alternative educational choices to students and their parents. Nonpublic schools also carry a significant part of the burden of providing primary and secondary school education in this country. It if becomes financially impossible for many of the families now sending their children to nonpublic schools to continue to do so, the resulting increase in public school attendance will place large and unwelcome new tax burdens on state and local taxpayers. The cost to taxpayers of offering some tax relief to parents, so that they can afford to keep their children in the private schools of their choice, is modest compared to the cost of educating their children in the public schools.

Thus, in order to promote diversity in education and the freedom of individuals to take advantage of it, and to nurture the pluralism in American society which this diversity fosters, I am transmitting to Congress today a draft bill which provides federal tax credits for the tuition expenses of children attending nonpublic primary or secondary schools. Starting in 1983, the Education Opportunity and Equity Act of 1983, if enacted, would allow a tax credit for the tuition expenses of each student attending a private, non-profit primary or secondary school. By 1985, when this new tuition tax credit would be fully phased in, a credit equal to 50% of tuition expenses paid during the year, but not to exceed $300, would be allowed for each student.

While it would be desirable for the reasons I have already mentioned to extend such tax relief for higher education tuition expenses as well, the large losses in federal tax revenues which would result make it impossible to recommend such legislation at this time. Today's proposal makes an important start by providing this relief where it is most necessary.

This Administration will not tolerate the use of tuition tax credits to foster racial discrimination. Consequently, the bill contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies. These provisions are identical to those that were adopted by the Senate Finance Committee last Fall with broad bipartisan support.

I ask that the Congress move as quickly as possible to enact this much needed legislation.

Sincerely,

Ronald Reagan

A BILL

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.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1983".

SECTION 2. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) Findings. -- The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore, this Act recognizes that --

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

(2) 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;

(3) Americans should have equal opportunities to choose between the education offered by public schools and 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 to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(4) 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 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 levels;

(5) 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, 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 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;

(6) 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;

(7) 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.

The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

(b) Purpose. -- The primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for Americans.

SECTION 3. CREDIT FOR TUITION EXPENSES.

(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 after section 44G the following new section:

"SECTION 44H. CREDIT FOR TUITION EXPENSES.

"(a) General Rule. -- At the election of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified tuition expenses paid by such individual during the taxable year for any qualified dependent.

"(b) Limitations. --

"(1) Maximum dollar amount per qualified dependent. --

"(A) In general. -- The amount of the credit allowable to the taxpayer under subsection (a) with respect to any qualified dependent for any taxable year shall not exceed the applicable amount.

"(B) Applicable amount. -- For purposes of this paragraph, the term 'applicable amount' means the excess, if any, of --

"(i) $300, over

"(ii) 1.5 percent (3 percent in the case of a married individual who does not file a joint return) of the amount, if any, by which the adjusted gross income of the taxpayer for the taxable year exceeds $40,000 ($20,000 in the case of such married individual).

"(C) Transitional rule. -- For taxable years beginning after December 31, 1982, and before January 1, 1985, subparagraph (B) shall be applied --

"(i) in taxable years beginning in 1983, by substituting --

"(I) '$100" for '$300',

"(II) '0.5 percent' for '1.5 percent', and

"(III) '1 percent' for '3 percent', and

"(ii) in taxable years beginning in 1984, by substituting --

"(I) '$200' for '$300',

"(II) '1 percent' for '1.5 percent', and

"(III) '2 percent' for '3 percent'.

"(2) Credit not to exceed tax liability. -- The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

"(c) Credit Denied for Amounts Paid to Racially Discriminatory Institutions. --

"(1) Declaratory judgment entered. --

"(A) In general. -- No credit shall be allowed under this section for any amount paid to an educational institution during any taxable year if --

"(i) within the calendar year ending with or within such taxable year or in any preceding calendar year --

"(I) a judgment has been entered by a district court of the United States under section 7408 (regardless of whether such judgment is appealed) declaring that such educational institution follows a racially discriminatory policy, or

"(II) an order by any United States Court of Appeals has been made which, by its terms, requires the district court to enter such a judgment, and

"(ii) no order described in section 7408(f)(2) with respect to such educational institution has been entered which is in effect for the calendar year ending with or within such taxable year.

"(B) Reversals of declaratory judgments or orders. --

"(i) In general. -- A judgment or order described in subparagraph (A)(i) entered in an action brought with respect to an educational institution shall not be taken into account under subparagraph (A) for any taxable year if, after all appeals in such action have been concluded or the time for filing such appeals has expired, the declaration contained in such judgment, or required to be entered under the terms of such order, that such institution has followed a racially discriminatory policy is negated (other than by reason of an order described in section 7408(f)(2)).

"(ii) Waiver of limitations. -- Notwithstanding section 6511(a) or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by this chapter which arises by reason of this subparagraph may be filed by any person at any time within the 1-year period beginning on the earlier of --

"(I) the date on which all appeals with respect to the judgment or order described in subparagraph (A)(i) have been concluded, or

"(II) the date on which the time for such appeals has expired.

Sections 6511(b) and 6514 shall not apply to any claim for credit or refund filed under this subparagraph within such 1-year period.

"(C) Stay of declaratory judgment. --

"(i) In general. -- Any judgment or order described in subparagraph (A)(i) shall not be taken into account under subparagraph (A) for any taxable year if such judgment or order is stayed as of the close of such taxable year.

"(ii) Removal of stay. -- If a stay entered against a judgment or order described in subparagraph (A)(i) is vacated --

"(I) this subparagraph shall not apply with respect to such judgment or order for any taxable year preceding the taxable year in which such stay is vacated, and

"(II) notwithstanding any other provision of this title or of any other law, the statutory period for the assessment of a deficiency attributable to the disallowance of any credit under this section by reason of this clause shall not expire before the date which is 3 years after the close of the calendar year in which such stay is removed.

"(D) Waiver of limitations if institution ceases to discriminate. -- Notwithstanding section 6511(a) or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by this chapter which arises by reason of a reversal of any order denying a motion under section 7408(f)(1)(A) may be filed by any person at any time within the 1-year period beginning on the date on which such reversal is made. Sections 6511(B) and 6514 shall not apply to any claim for credit or refund filed under this subparagraph within such 1-year period.

"(2) Required statements. --

"(A) Statements furnished by institutions to the Secretary. -- No credit shall be allowed under subsection

(a) for amounts paid to any educational institution during the taxable year if such educational institution has not filed with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) within 30 days after the close of the calendar year ending with or within such taxable year a verified statement which --

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

"(ii) indicates whether --

"(I) a declaratory judgment or order described in paragraph (1)(A)(i) has been entered against such institution in an action brought under section 7408;

"(II) a stay against such judgment or order is in effect; and

"(III) an order described in section 7408(f)(2) is in effect; and

"(iii) attests that such institution has complied with the requirements of subsection (d)(3)(D) during such calendar year.

"(B) Statements furnished to taxpayers. -- Except as otherwise provided by regulations, within 30 days after the close of the calendar year to which the statement described in subparagraph (A) relates, the educational institution shall furnish a copy of such statement to all persons who paid tuition expenses to the institution in the calendar year to which such statement relates.

"(C) Statements furnished by taxpayers to the Secretary. -- No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during the taxable year if the taxpayer does not attach to the return on which the taxpayer claims the credit the statement described in subparagraph (A) which is furnished by such institution for the calendar year ending with or within such taxable year of the taxpayer

"(3) Enforcement responsibility. -- The Attorney General shall have exclusive authority under this subsection to investigate and to determine whether an educational institution is following a racially discriminatory policy.

"(4) Racially discriminatory policy. -- For purposes of this subsection --

"(A) In general. -- An educational institution follows a racially discriminatory policy if such institution refuses, on the basis of race, to --

"(i) admit applicants as students;

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

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

"(B) Quotas, etc. -- The term 'racially discriminatory policy' shall not include failure of any educational institution to pursue or achieve any racial quota, proportion, or representation in the student body.

"(C) Race. -- The term 'race' shall include color or national origin.

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

"(1) Qualified tuition expenses. -- The term 'qualified tuition expenses' means the excess of --

"(A) the amount of tuition expenses paid by the taxpayer during the taxable year to any eligible educational institution for any qualified dependent of such taxpayer, over

"(B) any scholarship or financial assistance paid during such taxable year to such qualified dependent or to the taxpayer with respect to such qualified dependent.

"(2) Qualified dependent. -- The term 'qualified dependent' means any individual --

"(A) who is a dependent of the taxpayer (other than an individual described in paragraph (4), (5), (7), or (8) of section 152(a)),

"(B) who has not attained 20 years of age at the close of the taxable year, and

"(C) with respect to whom a deduction under section 151 is allowable to the taxpayer for the taxable year.

"(3) Eligible educational institution. -- The term 'eligible educational institution' means an educational institution --

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

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

"(C) which 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; and

"(D) which includes in any published by-laws, advertisements, admission application forms and other such published materials, a statement (in such form and manner as the Secretary may by regulations prescribe) that it does not discriminate against student applicants or students on the basis of race.

"(4) Tuition expenses. --

"(A) In general. -- 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.

"(B) Certain expenses excluded. -- The term 'tuition expenses' does not include any amount paid for --

"(i) books, supplies, and equipment for courses of instruction;

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

"(iii) education below the first-grade level; or

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

"(5) Scholarship or financial assistance. -- The term 'scholarship or financial assistance' means --

"(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 --

"(i) is for educational expenses, or attributable to attendance at an educational institution, "(ii) 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)).

"(e) Election. -- The election provided under subsection (a) shall be made at such time and in such manner as the Secretary shall by regulations prescribe.".

(b) Disclosure of Information to Attorney General. -- Subsection (h) of section 6103 of such Code (relating to disclosure to certain Federal officers and employees for tax administration purposes) is amended by adding at the end thereof the following new paragraph:

"(6) Certain investigations and proceedings regarding racially discriminatory policies. -- Upon the request of the Attorney General or the Secretary's own motion, the Secretary shall disclose any return or return information which is relevant to --

"(A) any investigation conducted by the Attorney General under section 44H(c) with regard to whether an educational institution is following a racially discriminatory policy (within the meaning of section 44H(c)(4)), or

"(B) any proceeding which may be brought under section 7408, to any officer or employee of the Department of Justice who is directly and personally involved in such investigation or in preparation for such a proceeding.".

(c) Conforming Amendment. --

"(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 44G the following:

"Sec. 44H. Tuition expenses.".

"(2) Section 6504 of such Code (relating to cross references with respect to periods of limitation) is amended by adding at the end thereof the following new paragraph:

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

SECTION 4. DECLARATORY JUDGMENT PROCEEDING.

(a) In General. -- 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 filing of an appropriate pleading by the Attorney General under subsection (b), the district court of the United States for the district in which an educational institution is located may make a declaration with respect to whether such institution follows a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

"(b) Filing of Pleading. --

"(1) In general. -- The Attorney General is authorized and directed to seek a declaratory judgment under subsection (a) against any educational institution upon --

"(A) receipt by the Attorney General within the previous 1-year period of any allegation of discrimination against such institution, and

"(B) a finding by the Attorney General of good cause.

"(2) Allegation of discrimination. -- For purposes of this section, the term 'allegation of discrimination' means an allegation made in writing by any person which alleges with specificity that --

"(A) a named educational institution has committed a racially discriminatory act against a named student applicant or student within one year preceding the date on which such allegation is made to the Attorney General, or

"(B) the educational institution made a communication, within one year preceding such date, expressing that the institution follows a racially discriminatory policy.

"(3) Notice of allegations of discrimination. -- Upon receipt of any allegation of discrimination made against an educational institution, the Attorney General shall promptly give written notice of such allegation to such institution.

"(4) Opportunity to comment. -- Before any action may be filed against an educational institution by the Attorney General under subsection (a), the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the alleged racially discriminatory policy does not exist or has been abandoned.

"(5) Availability of certain information to complainant. --

"(A) In general. -- If an allegation of discrimination against an educational institution is made to the Attorney General and the Attorney General --

"(i) declines to bring an action under subsection (a) against such institution, or

"(ii) enters into a settlement agreement with such institution under subsection (d) before such an action is brought, the Attorney General shall make available to the person who made such allegation the information upon which the Attorney General based the decision not to bring such an action or to enter into such settlement agreement. The Attorney General shall promptly give written notice to such person that such information is available for his inspection.

"(B) Privacy laws. -- Nothing in this paragraph shall be construed to authorize or require the Attorney General to disclose any information if such disclosure would violate any applicable State or Federal law relating to privacy.

"(c) Requirements for a Finding of Following a Racially Discriminatory Policy. -- A district court may declare that an educational institution follows a racially discriminatory policy in an action brought under subsection (a) only if the Attorney General establishes in such action that --

"(1) the institution has, pursuant to such policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of such action;

"(2) the institution has, within the two years preceding commencement of such action, made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

"(3) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of such action.

"(d) Settlements. --

"(1) In general. -- Prior to, and in lieu of, filing an action under subsection (a), the Attorney General may, at his discretion, enter into a settlement agreement with the educational institution against which an allegation of discrimination has been made if the Attorney General finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy.

"(2) Violation of settlement agreement. -- If the Attorney General has entered into a settlement agreement with an educational institution under paragraph (1) and the Attorney General finds that such institution is in violation of such agreement, the Attorney General may --

"(A) notwithstanding subsection (b)(1)(A), bring an action under subsection (a) without having received any allegation of discrimination against such institution, or

"(B) bring an action to enforce the terms of such agreement.

"(3) Copy of settlement agreement to complainant. -- The Attorney General shall give a copy of any settlement agreement which is entered into with any educational institution under paragraph (1) to any person from whom the Attorney General has received an allegation of discrimination against such institution.

"(e) Retention of Jurisdiction. -- Any district court which makes a declaration under subsection (a) that an educational institution follows a racially discriminatory policy shall retain jurisdiction of such case.

"(f) Discontinuance of Racially Discriminatory Policy. --

"(1) Motion. --

"(A) In general. -- At any time after the date which is 1 year after the date on which a judgment is entered in an action brought under subsection (a) declaring that an educational institution follows a racially discriminatory policy, such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy.

"(B) Affidavits. -- Any motion filed under subparagraph (A) shall contain affidavits --

"(i) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

"(ii) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

"(iii) averring that such institution has not, during the preceding year --

"(I) committed a racially discriminatory act against a student applicant or student pursuant to a racially discriminatory policy,

"(II) made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

"(III) engaged in a pattern of conduct intended to implement a racially discriminatory policy, and committed some act in furtherance of this pattern of conduct; and

"(iv) averring that such institution has complied with the requirements of section 44H(d)(3)(D).

"(2) Order. -- If a motion is made under paragraph (1), the district court shall issue an order modifying the judgment entered in the action to include a declaration that the educational institution no longer follows a racially discriminatory policy unless the Attorney General establishes that --

"(A) any affidavit provided by the institution under paragraph (1)(B) is false;

"(B) the institution has, during the preceding year, committed any act, made any communication, or engaged in any pattern of conduct described in paragraph (1)(B)(iii); or

"(C) the institution has not, in fact, complied with the requirements of clauses (ii) and (iv) of paragraph (1)(B).

"(3) Appeal of orders. -- Any order of the district court granting or denying a motion made under paragraph (1) shall be reviewable.

"(g) Attorneys' Fees. -- If an educational institution prevails in an action under this section, the court may award the institution costs and reasonable attorneys' fees in such action.

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

"(1) Racially discriminatory policy. -- The term 'racially discriminatory policy' has the meaning given to such term by section 44H(c)(4).

"(2) Racially discriminatory act. --

"(A) In general. -- An educational institution commits a racially discriminatory act if such institution refuses, on the basis of race, to --

"(i) admit any applicant as a student;

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

"(iii) allow any student to participate in its scholarship, loan, athletic, or other programs.

"(B) Quotas, etc. -- The term 'racially discriminatory act' shall not include the failure of such institution to pursue or achieve any racial quota, proportion, or representation in the student body.

"(C) Race. -- The term 'race' shall include color or national origin.

"(i) Report. -- Within 90 days of the close of each calendar year, the Attorney General shall submit a report to the Congress concerning the disposition during such calendar year of --

"(1) any allegations of discrimination received by the Attorney General, and

"(2) any actions brought under this section.".

(b) Conforming Amendments. --

(1) The table of sections for subchapter A of chapter 76 of such Code (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.".

(2) Section 2201 of title 28, United States Code (relating to creation of declaratory judgment remedy) is amended by striking out "section 7428" and inserting in lieu thereof "section 7408 or 7428".

SECTION 5. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under section 44H of the Internal Revenue Code of 1954 shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits.

SECTION 6. EFFECTIVE DATE; SPECIAL RULE.

(a) Certification Required. -- The amendments made by this Act shall not take effect until the Attorney General certifies to the Secretary of the Treasury that, pursuant to --

(1) an Act of Congress which has been enacted, or

(2) a final decision of the United States Supreme Court,

the Internal Revenue Code of 1954 prohibits the granting of tax exemption under section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

(b) Application When Certification is Made. --

(1) In general. -- If the certification described in subsection (a) is made to the Secretary of the Treasury --

(A) except as provided in paragraph (2), the amendments made by section 3 shall apply with respect to expenditures made after the date on which such certification is made to the Secretary of the Treasury in taxable years beginning after December 31, 1982, and ending after such date, and

(B) the amendments made by section 4 shall take effect on the date on which such certification is made to the Secretary of the Treasury.

(2) No application before July 31, 1983. -- In no event shall the amendments made by section 3 apply with respect to expenditures made before August 1, 1983.