II

117TH CONGRESS
1ST SESSION

S. 2165

To amend the Elementary and Secondary Education Act of 1965 to allow parents of eligible military dependent children to establish Military Education Savings Accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2021

Mr. SASSE (for himself, Mr. BRAUN, Mr. COTTON, Mr. CRUZ, and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Elementary and Secondary Education Act of 1965 to allow parents of eligible military dependent children to establish Military Education Savings Accounts, and for other purposes.

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 ''Education Savings Accounts for Military Families Act of 2021''.

SEC. 2. MILITARY EDUCATION SAVINGS ACCOUNTS.

(a) IN GENERAL.—Title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.) is amended by inserting after section 7012 the following:

"SEC. 7012A. MILITARY EDUCATION SAVINGS ACCOUNTS.

"(a) IN GENERAL.—The Secretary of Education, in consultation with the Secretary of Defense, shall carry out a program under which the Secretary of Education shall—

"(1) at the request of a parent of an eligible military dependent child, establish an account on behalf of such child (to be known as a 'Military Education Savings Account') into which the Secretary shall deposit funds in an amount determined under subsection (d); and

"(2) establish a procedure under which the parent of the child may use funds in the account to pay for the educational expenses of the child in accordance with this section.

"(b) APPLICATION.—

"(1) IN GENERAL.—To be eligible to participate in the program under this section for a school year, a parent of an eligible military dependent child shall submit an application to the Secretary in accordance with this subsection.

"(2) APPLICATION PROCESS.—In carrying out paragraph (1), the Secretary shall—

"(A) accept applications on a year-round basis and establish procedures for approving applications in an expeditious manner; and

"(B) create a standardized form that parents can use to apply for the program and ensure that such form is readily available in written and electronic formats, including on a publicly accessible website.

"(3) APPROVAL.—Subject to the availability of funds to carry out this section, the Secretary shall approve the application of a parent to establish a Military Education Savings Account if—

"(A) the application is submitted in accordance with the application process established by the Secretary pursuant to this subsection;

"(B) the application demonstrates that the child on whose behalf the Military Education Savings Account is to be established is an eligible military dependent child; and

"(C) the parent who submits the application enters into a written agreement with the Secretary under which the parent agrees—

"(i) to provide the child with instruction in, at minimum, the fields of reading, language, mathematics, science, and social studies;

"(ii) to not enroll the child in a public elementary school or a public secondary school, on a full-time basis while participating in the program;

"(iii) to use funds in the Military Education Savings Account only for the purposes authorized under this section; and

"(iv) to comply with all other requirements of this section.

"(4) RENEWALS.—The Secretary shall establish a process for the automatic renewal of a previously established Military Education Savings Account except in cases in which—

"(A) the parents of the child on whose behalf the account was established choose not to renew the account; or

"(B) the account was used to commit fraud or was otherwise not used in accordance with the requirements of this section.

"(c) PRIORITY IN THE EVENT OF INSUFFICIENT FUNDS.—

"(1) IN GENERAL.—If the funds appropriated to carry out this section are insufficient to enable the Secretary to establish and fully fund a Military Education Savings Account for each eligible military dependent child whose parent has an application approved under subsection (b) for a school year, the Secretary shall—

"(A) first renew and fully fund previously established Military Education Savings Accounts; and

"(B) if funds remain available after renewing all accounts under subparagraph (A), conduct the lottery described in paragraph (3) to select the children on whose behalf accounts will be established using the remaining funds.

"(2) TRANSFER AUTHORITY.—Notwithstanding any other provision of law, the Secretary may transfer amounts from any account of the Department of Education to renew and fully fund previously established Military Education Savings Accounts under paragraph (1)(A). The authority to transfer amounts under the preceding sentence shall not be subject to any transfer or reprogramming requirements under any other provision of law.

"(3) LOTTERY.—The lottery described in this paragraph is a lottery in which—

"(A) siblings of children on whose behalf Military Education Savings Accounts have previously been established have the highest probability of selection;

"(B) children of enlisted members have the next-highest probability of selection after the children described in subparagraph (A);

"(C) children of warrant officers have the next-highest probability of selection after the children described in subparagraph (B); and

"(D) children of commissioned officers have the lowest probability of selection.

"(d) AMOUNT OF DEPOSITS.—

"(1) FIRST YEAR OF PROGRAM.—The amount of funds deposited into each Military Education Savings Account for the first school year for which such accounts are established under this section shall be $6,000 for each eligible military dependant child covered by the account.

"(2) SUBSEQUENT YEARS.—The amount of funds deposited into each Military Education Savings Account for any school year after the year described in paragraph (1), shall be the amount determined under this subsection for the previous school year increased by a percentage equal to the percentage increase in the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor) over the period of such previous school year.

"(e) USE OF FUNDS.—Funds deposited into a Military Education Savings Account for a school year may be used by the parent of an eligible military dependent child to make payments to a qualified educational service provider that is approved by the Secretary under subsection (f)(1) for—

"(1) costs of attendance at a private elementary school or secondary school recognized by the State, which may include a private school that has a religious mission;

"(2) private online learning programs;

"(3) private tutoring;

"(4) services provided by a public elementary school or secondary school attended by the child on a less than full-time basis, including individual classes and extracurricular activities and programs;

"(5) textbooks, curriculum programs, or other instructional materials, including any supplemental materials required by a curriculum program, private school, private online learning program, or a public school, or any parent directed curriculum associated with K–12 education;

"(6) computer hardware or other technological devices that are used to help meet a child's educational needs, except that such hardware or devices may not be purchased by a parent more than once in an 18-month period;

"(7) educational software and applications;

"(8) uniforms purchased from or through a private school recognized by the State;

"(9) fees for nationally standardized assessment exams, advanced placement exams, any exams related to college or university admission, or tuition or fees for preparatory courses for such exams;

"(10) fees for summer education programs and specialized after-school education programs (but not including after-school childcare);

"(11) educational services and therapies, including occupational, behavioral, physical, speech-language, and audiology therapies;

"(12) fees for transportation paid to a fee-for-service transportation provider for the child to travel to and from the facilities of a qualified educational service provider;

"(13) costs of attendance at an institution of higher education;

"(14) costs associated with an apprenticeship or other vocational training program;

"(15) fees for state-recognized industry certification exams, and tuition or fees for preparatory courses for such exams;

"(16) contributions to a college savings account, which may include contributions to a qualified tuition program (as defined in section 529(b)(1)(A) of the Internal Revenue Code of 1986) or other prepaid tuition plan offered by a State; or

"(17) any other educational expenses approved by the Secretary.

"(f) REQUIREMENTS FOR QUALIFIED EDUCATIONAL SERVICE PROVIDERS.—

"(1) REGISTRATION AND APPROVAL.—The Secretary shall establish and maintain a registry of qualified educational service providers that are approved to receive payments from a Military Education Savings Account. The Secretary shall approve a qualified educational service provider to receive such payments if the provider demonstrates to the Secretary that it is licensed in the State in which it operates to provide one or more of the services for which funds may be expended under subsection (e).

"(2) PARTICIPATION IN ONLINE MARKETPLACE.—As a condition of receiving funds from a Military Education Savings Account, a qualified educational service provider shall make its services available for purchase through the online marketplace described in subsection (g).

"(3) SURETY BOND.—

"(A) IN GENERAL.—The Secretary shall require each qualified educational service provider that receives $100,000 or more in funds from Military Education Savings Accounts in a school year to post a surety bond, in an amount determined by the Secretary, for such school year.

"(B) RETENTION.—The Secretary shall prescribe the circumstances under which a surety bond under subparagraph (A) may be retained by the Secretary.

"(g) ONLINE MARKETPLACE.—

"(1) IN GENERAL.—The Secretary shall seek to enter into a contract with a private-sector entity under which the entity shall—

"(A) establish and operate an online marketplace that enables the holder of a Military Education Savings Account to make direct purchases from qualified educational service providers using funds from such account;

"(B) ensure that each qualified educational service provider on the registry maintained by the Secretary under subsection (f)(1) has made its services available for purchase through the online marketplace;

"(C) ensure that all purchases made through the online marketplace are for services that are allowable uses of funds under subsection (e); and

"(D) develop and make available a standardized expense report form, in electronic and hard copy formats, to be used by parents for reporting expenses in accordance with subsection (h)(3).

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require the holder of a Military Education Savings Account to make purchases using the online marketplace described in paragraph (1).

"(h) TRANSFER SCHEDULE.—

"(1) In general.—Subject to paragraph (2), the Secretary shall make quarterly transfers of the amount calculated pursuant to subsection (d) for deposit into the account of each eligible military dependent child, except that the Secretary may make transfers according to another transfer schedule if the Secretary determines that a transfer schedule other than quarterly transfers is necessary for the operation of the education savings account.

"(2) Choice of schedule.—The Secretary shall establish a process under which the parent of a child on whose behalf a Military Education Savings Account is established may choose a transfer schedule other than a transfer schedule determined under paragraph (1).

"(3) Expense reports.—

"(A) Submission required.—Before receiving a transfer under paragraph (1) or (2), the parent of an eligible military dependent child on whose behalf a Military Education Savings Account is established shall submit to the Secretary an expense report demonstrating how funds from the most recent transfer were expended.

"(B) FORMAT.—Each such expense report shall be submitted using the standardized expense report form developed under subsection (g)(1)(D).

"(i) ROLLOVER.—Amounts remaining in the Military Education Savings Account of an eligible military dependent child at the end of a school year shall remain available for use in accordance with subsection (e) until the date on which such account terminates under subsection (j).

"(j) TERMINATION AND RETURN OF FUNDS.—

"(1) TERMINATION.—The Military Education Savings Account of an eligible military dependent child shall terminate on—

"(A) the date on which the child enrolls in a public elementary school or secondary school on a full-time basis;

"(B) in the case of a child who is pursuing postsecondary education, the earlier of—

"(i) the date on which the child completes postsecondary education; or

"(ii) the date on which the child attains the age of 22 years;

"(C) in the case of a child who is an individual with a disability, the date on which the child attains the age of 26 years; or

''(D) in the case of an individual not described in subparagraphs (B) or (C), the earlier of—

''(i) the date on which the child attains the age of 22 years; or

''(ii) the expiration of any 2-year period during which funds in the account are not used in accordance with this section.

''(2) RETURN OF FUNDS.—Any funds remaining in a Military Education Savings Account on the date such account terminates under paragraph (1) shall be returned to the Treasury of the United States and shall be used to carry out the program under this section.

''(k) COMPULSORY ATTENDANCE REQUIREMENTS.—A State that receives funds under this title shall consider a child with a Military Education Savings Account for a school year as meeting the State's compulsory school attendance requirements for such school year.

''(l) SPECIAL RULE.—In the case of a child with a Military Education Savings Account who attends a public school on a less than full-time basis in a school year—

''(1) the child may not attend the public school free of charge; and

"(2) funds in the account, in an amount determined pursuant to an agreement between the parent of the child and the local educational agency concerned, shall be used to pay for the child's costs of attendance at such school.

"(m) TAX TREATMENT OF ACCOUNTS.—

"(1) IN GENERAL.—A Military Education Savings Account is exempt from taxation under subtitle A of the Internal Revenue Code of 1986.

"(2) CONTRIBUTIONS AND DISTRIBUTIONS.—For purposes of subtitle A of the Internal Revenue Code of 1986—

"(A) any contribution to a military education savings account by the Secretary under this Act shall not be includible in the gross income of the individual for whose benefit such account is maintained or the parent of such individual; and

"(B) any distribution from a military education savings account which is permitted under this Act shall not be includible in the gross income of the individual for whose benefit such account is maintained or the parent of such individual.

"(n) FRAUD PREVENTION AND REPORTING.—The Secretary shall establish a website and a telephone hotline that enable individuals to anonymously report suspected fraud in the program under this section. The Secretary also shall conduct or contract for random, quarterly, or annual audits of accounts as needed to ensure compliance with this section.

"(o) CONTRACT AUTHORITY.—The Secretary may enter into one or more contracts for the purpose of carrying out the responsibilities of the Secretary under this section.

"(p) REFUNDS.—The Secretary shall establish a process under which payments from a Military Education Savings Accounts to a qualified educational service provider shall be refunded to the account in the event of fraud or nonperformance by the provider.

"(q) RULES OF CONSTRUCTION.—

"(1) NONAGENCY.—A qualified educational service provider that receives a payment from a Military Education Savings Account pursuant to this section shall not be considered an agent of the State or the Federal Government solely because the provider received such payment.

"(2) FEDERAL OR STATE SUPERVISION.—Nothing in this section shall be construed to allow any agency of a State or the Federal Government to exercise control or supervision over any qualified educational service provider.

"(3) IMPOSITION OF ADDITIONAL REQUIREMENTS.—No Federal requirements shall apply to a qualified educational service provider other than the requirements specifically set forth in this section. Nothing in this section shall be construed to require a qualified educational service provider to alter its creed, practices, admissions policy, or curriculum in order to be eligible to receive payments from a Military Education Savings Account.

"(4) TREATMENT OF ASSISTANCE.—For purposes of any Federal law, assistance provided under this section shall be considered assistance to the eligible military dependent child or to the parents of a child on whose behalf a Military Education Savings Account is established and shall not be considered assistance to the qualified educational service provider that uses or receives funds from a Military Education Savings Account.

"(r) LEGAL PROCEEDINGS.—

"(1) BURDEN.—In any legal proceeding in which a qualified educational service provider challenges a requirement imposed by the Department of

Education on the provider, the Department shall have the burden of establishing that the requirement is necessary and does not impose any undue burden on the provider.

"(2) LIMITATION ON LIABILITY.—

"(A) IN GENERAL.—No liability shall arise on the part of an entity described in subparagraph (B) solely because such entity awards, uses, or receives funds from a Military Education Savings Account.

"(B) ENTITY DESCRIBED.—The entities described in this subparagraph are the following:

"(i) The Department of Education.

"(ii) An entity that enters into a contract with the Secretary pursuant to subsection (g) or subsection (o).

"(iii) A qualified educational service provider.

"(3) INTERVENTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a parent of an eligible military dependent child or a parent of a child on whose behalf a Military Education Savings Account is established may intervene in any legal proceeding in which the constitutionality of the program under this section is challenged under a State constitution or the United States Constitution.

"(B) EXCEPTION.—For purposes of judicial administration, a court may—

"(i) limit the number of parents allowed to intervene in a proceeding under subparagraph (A); or

"(ii) require all parents who have intervened in a proceeding under subparagraph (A) to file a joint brief, except that no parent shall be required to join any brief filed on behalf of a State that is a defendant in the proceeding.

"(s) ADMINISTRATIVE EXPENSES.—The Secretary may use not more than 5 percent of the funds made available to carry out this section for the direct costs of administering Military Education Savings Accounts.

"(t) DEFINITIONS.—In this section:

"(1) The terms 'commissioned officer', 'enlisted member', and 'warrant officer' have the meanings given those terms in section 101(b) of title 10, United States Code.

''(2) The term 'eligible military dependent child' means a child who—

''(A) has a parent on active duty in the uniformed services (as that term is defined in section 101 of title 37, United States Code, except that such term does not include an officer in the National Guard who has been activated); and

''(B) in the case of a child seeking to establish a Military Education Savings account for the first time, was enrolled in a public elementary school or a public secondary school for not less than 100 consecutive days in the preceding school year.

''(3) The term 'institution of higher education' has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).

''(4) The term 'qualified educational service provider' means an entity or person that is licensed by a State to provide one or more of the educational services for which funds may be expended under subsection (e), including—

''(A) a private school;

''(B) a non-public online learning program or course provider;

“(C) an institution of higher education, which may include a community college or a technical college;

“(D) a public school;

“(E) a private tutor or entity that operates a tutoring facility;

“(F) a provider of educational materials or curriculum;

“(G) a provider of education-related therapies or services; or

“(H) any other provider of educational services licensed by a State to provide such services.”.

(b) TABLE OF CONTENTS.—The table of contents in section 2 of the Elementary and Secondary Education Act is amended by inserting after the item relating to section 7012 the following:

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 7014 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7714) is amended by adding at the end the following:

“(f) MILITARY EDUCATION SAVINGS ACCOUNTS.—For the purpose of carrying out section 7012A—

“(1) there are authorized to be appropriated $1,200,000,000 for fiscal year 2022; and

"(2) for each fiscal year beginning after fiscal year 2022, the amount authorized to be appropriated shall be the amount authorized to be appropriated for the previous fiscal year increased by the percentage increase in the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor) over the period of such previous fiscal year.".

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