

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

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Education Savings Ac-
5 counts for Military Families Act of 2021”.

6 **SEC. 2. MILITARY EDUCATION SAVINGS ACCOUNTS.**

7 (a) IN GENERAL.—Title VII of the Elementary and
8 Secondary Education Act of 1965 (20 U.S.C. 7701 et

1 seq.) is amended by inserting after section 7012 the fol-
 2 lowing:

3 **“SEC. 7012A. MILITARY EDUCATION SAVINGS ACCOUNTS.**

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

7 “(1) at the request of a parent of an eligible
 8 military dependent child, establish an account on be-
 9 half of such child (to be known as a ‘Military Edu-
 10 cation Savings Account’) into which the Secretary
 11 shall deposit funds in an amount determined under
 12 subsection (d); and

13 “(2) establish a procedure under which the par-
 14 ent of the child may use funds in the account to pay
 15 for the educational expenses of the child in accord-
 16 ance with this section.

17 “(b) APPLICATION.—

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

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

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

4 “(B) create a standardized form that par-
5 ents can use to apply for the program and en-
6 sure that such form is readily available in writ-
7 ten and electronic formats, including on a pub-
8 licly accessible website.

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

13 “(A) the application is submitted in ac-
14 cordance with the application process estab-
15 lished by the Secretary pursuant to this sub-
16 section;

17 “(B) the application demonstrates that the
18 child on whose behalf the Military Education
19 Savings Account is to be established is an eligi-
20 ble military dependent child; and

21 “(C) the parent who submits the applica-
22 tion enters into a written agreement with the
23 Secretary under which the parent agrees—

24 “(i) to provide the child with instruc-
25 tion in, at minimum, the fields of reading,

1 language, mathematics, science, and social
2 studies;

3 “(ii) to not enroll the child in a public
4 elementary school or a public secondary
5 school, on a full-time basis while partici-
6 pating in the program;

7 “(iii) to use funds in the Military
8 Education Savings Account only for the
9 purposes authorized under this section;
10 and

11 “(iv) to comply with all other require-
12 ments of this section.

13 “(4) RENEWALS.—The Secretary shall establish
14 a process for the automatic renewal of a previously
15 established Military Education Savings Account ex-
16 cept in cases in which—

17 “(A) the parents of the child on whose be-
18 half the account was established choose not to
19 renew the account; or

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

23 “(c) PRIORITY IN THE EVENT OF INSUFFICIENT
24 FUNDS.—

1 “(1) IN GENERAL.—If the funds appropriated
2 to carry out this section are insufficient to enable
3 the Secretary to establish and fully fund a Military
4 Education Savings Account for each eligible military
5 dependent child whose parent has an application ap-
6 proved under subsection (b) for a school year, the
7 Secretary shall—

8 “(A) first renew and fully fund previously
9 established Military Education Savings Ac-
10 counts; and

11 “(B) if funds remain available after renew-
12 ing all accounts under subparagraph (A), con-
13 duct the lottery described in paragraph (3) to
14 select the children on whose behalf accounts will
15 be established using the remaining funds.

16 “(2) TRANSFER AUTHORITY.—Notwithstanding
17 any other provision of law, the Secretary may trans-
18 fer amounts from any account of the Department of
19 Education to renew and fully fund previously estab-
20 lished Military Education Savings Accounts under
21 paragraph (1)(A). The authority to transfer
22 amounts under the preceding sentence shall not be
23 subject to any transfer or reprogramming require-
24 ments under any other provision of law.

1 “(3) LOTTERY.—The lottery described in this
2 paragraph is a lottery in which—

3 “(A) siblings of children on whose behalf
4 Military Education Savings Accounts have pre-
5 viously been established have the highest prob-
6 ability of selection;

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

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

13 “(D) children of commissioned officers
14 have the lowest probability of selection.

15 “(d) AMOUNT OF DEPOSITS.—

16 “(1) FIRST YEAR OF PROGRAM.—The amount
17 of funds deposited into each Military Education Sav-
18 ings Account for the first school year for which such
19 accounts are established under this section shall be
20 \$6,000 for each eligible military dependant child
21 covered by the account.

22 “(2) SUBSEQUENT YEARS.—The amount of
23 funds deposited into each Military Education Sav-
24 ings Account for any school year after the year de-
25 scribed in paragraph (1), shall be the amount deter-

1 mined under this subsection for the previous school
 2 year increased by a percentage equal to the percent-
 3 age increase in the Chained Consumer Price Index
 4 for All Urban Consumers (as published by the Bu-
 5 reau of Labor Statistics of the Department of
 6 Labor) over the period of such previous school year.

7 “(e) USE OF FUNDS.—Funds deposited into a Mili-
 8 tary Education Savings Account for a school year may be
 9 used by the parent of an eligible military dependent child
 10 to make payments to a qualified educational service pro-
 11 vider that is approved by the Secretary under subsection
 12 (f)(1) for—

13 “(1) costs of attendance at a private elementary
 14 school or secondary school recognized by the State,
 15 which may include a private school that has a reli-
 16 gious mission;

17 “(2) private online learning programs;

18 “(3) private tutoring;

19 “(4) services provided by a public elementary
 20 school or secondary school attended by the child on
 21 a less than full-time basis, including individual class-
 22 es and extracurricular activities and programs;

23 “(5) textbooks, curriculum programs, or other
 24 instructional materials, including any supplemental
 25 materials required by a curriculum program, private

1 school, private online learning program, or a public
2 school, or any parent directed curriculum associated
3 with K–12 education;

4 “(6) computer hardware or other technological
5 devices that are used to help meet a child’s edu-
6 cational needs, except that such hardware or devices
7 may not be purchased by a parent more than once
8 in an 18-month period;

9 “(7) educational software and applications;

10 “(8) uniforms purchased from or through a pri-
11 vate school recognized by the State;

12 “(9) fees for nationally standardized assessment
13 exams, advanced placement exams, any exams re-
14 lated to college or university admission, or tuition or
15 fees for preparatory courses for such exams;

16 “(10) fees for summer education programs and
17 specialized after-school education programs (but not
18 including after-school childcare);

19 “(11) educational services and therapies, in-
20 cluding occupational, behavioral, physical, speech-
21 language, and audiology therapies;

22 “(12) fees for transportation paid to a fee-for-
23 service transportation provider for the child to travel
24 to and from the facilities of a qualified educational
25 service provider;

1 “(13) costs of attendance at an institution of
2 higher education;

3 “(14) costs associated with an apprenticeship or
4 other vocational training program;

5 “(15) fees for state-recognized industry certifi-
6 cation exams, and tuition or fees for preparatory
7 courses for such exams;

8 “(16) contributions to a college savings ac-
9 count, which may include contributions to a qualified
10 tuition program (as defined in section 529(b)(1)(A)
11 of the Internal Revenue Code of 1986) or other pre-
12 paid tuition plan offered by a State; or

13 “(17) any other educational expenses approved
14 by the Secretary.

15 “(f) REQUIREMENTS FOR QUALIFIED EDUCATIONAL
16 SERVICE PROVIDERS.—

17 “(1) REGISTRATION AND APPROVAL.—The Sec-
18 retary shall establish and maintain a registry of
19 qualified educational service providers that are ap-
20 proved to receive payments from a Military Edu-
21 cation Savings Account. The Secretary shall approve
22 a qualified educational service provider to receive
23 such payments if the provider demonstrates to the
24 Secretary that it is licensed in the State in which it

1 operates to provide one or more of the services for
2 which funds may be expended under subsection (e).

3 “(2) PARTICIPATION IN ONLINE MARKET-
4 PLACE.—As a condition of receiving funds from a
5 Military Education Savings Account, a qualified edu-
6 cational service provider shall make its services
7 available for purchase through the online market-
8 place described in subsection (g).

9 “(3) SURETY BOND.—

10 “(A) IN GENERAL.—The Secretary shall
11 require each qualified educational service pro-
12 vider that receives \$100,000 or more in funds
13 from Military Education Savings Accounts in a
14 school year to post a surety bond, in an amount
15 determined by the Secretary, for such school
16 year.

17 “(B) RETENTION.—The Secretary shall
18 prescribe the circumstances under which a sur-
19 ety bond under subparagraph (A) may be re-
20 tained by the Secretary.

21 “(g) ONLINE MARKETPLACE.—

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

1 “(A) establish and operate an online mar-
 2 ketplace that enables the holder of a Military
 3 Education Savings Account to make direct pur-
 4 chases from qualified educational service pro-
 5 viders using funds from such account;

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

11 “(C) ensure that all purchases made
 12 through the online marketplace are for services
 13 that are allowable uses of funds under sub-
 14 section (e); and

15 “(D) develop and make available a stand-
 16 ardized expense report form, in electronic and
 17 hard copy formats, to be used by parents for re-
 18 porting expenses in accordance with subsection
 19 (h)(3).

20 “(2) RULE OF CONSTRUCTION.—Nothing in
 21 this subsection shall be construed to require the
 22 holder of a Military Education Savings Account to
 23 make purchases using the online marketplace de-
 24 scribed in paragraph (1).

25 “(h) TRANSFER SCHEDULE.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 the Secretary shall make quarterly transfers of the
3 amount calculated pursuant to subsection (d) for de-
4 posit into the account of each eligible military de-
5 pendent child, except that the Secretary may make
6 transfers according to another transfer schedule if
7 the Secretary determines that a transfer schedule
8 other than quarterly transfers is necessary for the
9 operation of the education savings account.

10 “(2) CHOICE OF SCHEDULE.—The Secretary
11 shall establish a process under which the parent of
12 a child on whose behalf a Military Education Sav-
13 ings Account is established may choose a transfer
14 schedule other than a transfer schedule determined
15 under paragraph (1).

16 “(3) EXPENSE REPORTS.—

17 “(A) SUBMISSION REQUIRED.—Before re-
18 ceiving a transfer under paragraph (1) or (2),
19 the parent of an eligible military dependent
20 child on whose behalf a Military Education Sav-
21 ings Account is established shall submit to the
22 Secretary an expense report demonstrating how
23 funds from the most recent transfer were ex-
24 pended.

1 “(B) FORMAT.—Each such expense report
 2 shall be submitted using the standardized ex-
 3 pense report form developed under subsection
 4 (g)(1)(D).

5 “(i) ROLLOVER.—Amounts remaining in the Military
 6 Education Savings Account of an eligible military depend-
 7 ent child at the end of a school year shall remain available
 8 for use in accordance with subsection (e) until the date
 9 on which such account terminates under subsection (j).

10 “(j) TERMINATION AND RETURN OF FUNDS.—

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

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

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

19 “(i) the date on which the child com-
 20 pletes postsecondary education; or

21 “(ii) the date on which the child at-
 22 tains the age of 22 years;

23 “(C) in the case of a child who is an indi-
 24 vidual with a disability, the date on which the
 25 child attains the age of 26 years; or

1 “(D) in the case of an individual not de-
 2 scribed in subparagraphs (B) or (C), the earlier
 3 of—

4 “(i) the date on which the child at-
 5 tains the age of 22 years; or

6 “(ii) the expiration of any 2-year pe-
 7 riod during which funds in the account are
 8 not used in accordance with this section.

9 “(2) RETURN OF FUNDS.—Any funds remain-
 10 ing in a Military Education Savings Account on the
 11 date such account terminates under paragraph (1)
 12 shall be returned to the Treasury of the United
 13 States and shall be used to carry out the program
 14 under this section.

15 “(k) COMPULSORY ATTENDANCE REQUIREMENTS.—
 16 A State that receives funds under this title shall consider
 17 a child with a Military Education Savings Account for a
 18 school year as meeting the State’s compulsory school at-
 19 tendance requirements for such school year.

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

23 “(1) the child may not attend the public school
 24 free of charge; and

1 “(2) funds in the account, in an amount deter-
 2 mined pursuant to an agreement between the parent
 3 of the child and the local educational agency con-
 4 cerned, shall be used to pay for the child’s costs of
 5 attendance at such school.

6 “(m) TAX TREATMENT OF ACCOUNTS.—

7 “(1) IN GENERAL.—A Military Education Sav-
 8 ings Account is exempt from taxation under subtitle
 9 A of the Internal Revenue Code of 1986.

10 “(2) CONTRIBUTIONS AND DISTRIBUTIONS.—
 11 For purposes of subtitle A of the Internal Revenue
 12 Code of 1986—

13 “(A) any contribution to a military edu-
 14 cation savings account by the Secretary under
 15 this Act shall not be includible in the gross in-
 16 come of the individual for whose benefit such
 17 account is maintained or the parent of such in-
 18 dividual; and

19 “(B) any distribution from a military edu-
 20 cation savings account which is permitted under
 21 this Act shall not be includible in the gross in-
 22 come of the individual for whose benefit such
 23 account is maintained or the parent of such in-
 24 dividual.

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

8 “(o) CONTRACT AUTHORITY.—The Secretary may
9 enter into one or more contracts for the purpose of car-
10 rying out the responsibilities of the Secretary under this
11 section.

12 “(p) REFUNDS.—The Secretary shall establish a
13 process under which payments from a Military Education
14 Savings Accounts to a qualified educational service pro-
15 vider shall be refunded to the account in the event of fraud
16 or nonperformance by the provider.

17 “(q) RULES OF CONSTRUCTION.—

18 “(1) NONAGENCY.—A qualified educational
19 service provider that receives a payment from a Mili-
20 tary Education Savings Account pursuant to this
21 section shall not be considered an agent of the State
22 or the Federal Government solely because the pro-
23 vider received such payment.

24 “(2) FEDERAL OR STATE SUPERVISION.—Noth-
25 ing in this section shall be construed to allow any

1 agency of a State or the Federal Government to ex-
2 ercise control or supervision over any qualified edu-
3 cational service provider.

4 “(3) IMPOSITION OF ADDITIONAL REQUIRE-
5 MENTS.—No Federal requirements shall apply to a
6 qualified educational service provider other than the
7 requirements specifically set forth in this section.
8 Nothing in this section shall be construed to require
9 a qualified educational service provider to alter its
10 creed, practices, admissions policy, or curriculum in
11 order to be eligible to receive payments from a Mili-
12 tary Education Savings Account.

13 “(4) TREATMENT OF ASSISTANCE.—For pur-
14 poses of any Federal law, assistance provided under
15 this section shall be considered assistance to the eli-
16 gible military dependent child or to the parents of a
17 child on whose behalf a Military Education Savings
18 Account is established and shall not be considered
19 assistance to the qualified educational service pro-
20 vider that uses or receives funds from a Military
21 Education Savings Account.

22 “(r) LEGAL PROCEEDINGS.—

23 “(1) BURDEN.—In any legal proceeding in
24 which a qualified educational service provider chal-
25 lenges a requirement imposed by the Department of

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

5 “(2) LIMITATION ON LIABILITY.—

6 “(A) IN GENERAL.—No liability shall arise
 7 on the part of an entity described in subpara-
 8 graph (B) solely because such entity awards,
 9 uses, or receives funds from a Military Edu-
 10 cation Savings Account.

11 “(B) ENTITY DESCRIBED.—The entities
 12 described in this subparagraph are the fol-
 13 lowing:

14 “(i) The Department of Education.

15 “(ii) An entity that enters into a con-
 16 tract with the Secretary pursuant to sub-
 17 section (g) or subsection (o).

18 “(iii) A qualified educational service
 19 provider.

20 “(3) INTERVENTION.—

21 “(A) IN GENERAL.—Except as provided in
 22 subparagraph (B), a parent of an eligible mili-
 23 tary dependent child or a parent of a child on
 24 whose behalf a Military Education Savings Ac-
 25 count is established may intervene in any legal

1 proceeding in which the constitutionality of the
2 program under this section is challenged under
3 a State constitution or the United States Con-
4 stitution.

5 “(B) EXCEPTION.—For purposes of judi-
6 cial administration, a court may—

7 “(i) limit the number of parents al-
8 lowed to intervene in a proceeding under
9 subparagraph (A); or

10 “(ii) require all parents who have in-
11 tervened in a proceeding under subpara-
12 graph (A) to file a joint brief, except that
13 no parent shall be required to join any
14 brief filed on behalf of a State that is a de-
15 fendant in the proceeding.

16 “(s) ADMINISTRATIVE EXPENSES.—The Secretary
17 may use not more than 5 percent of the funds made avail-
18 able to carry out this section for the direct costs of admin-
19 istering Military Education Savings Accounts.

20 “(t) DEFINITIONS.—In this section:

21 “(1) The terms ‘commissioned officer’, ‘enlisted
22 member’, and ‘warrant officer’ have the meanings
23 given those terms in section 101(b) of title 10,
24 United States Code.

1 “(2) The term ‘eligible military dependent child’
2 means a child who—

3 “(A) has a parent on active duty in the
4 uniformed services (as that term is defined in
5 section 101 of title 37, United States Code, ex-
6 cept that such term does not include an officer
7 in the National Guard who has been activated);
8 and

9 “(B) in the case of a child seeking to es-
10 tablish a Military Education Savings account
11 for the first time, was enrolled in a public ele-
12 mentary school or a public secondary school for
13 not less than 100 consecutive days in the pre-
14 ceding school year.

15 “(3) The term ‘institution of higher education’
16 has the meaning given the term in section 102 of the
17 Higher Education Act of 1965 (20 U.S.C. 1002).

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

23 “(A) a private school;

24 “(B) a non-public online learning program
25 or course provider;

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

4 “(D) a public school;

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

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

9 “(G) a provider of education-related thera-
 10 pies or services; or

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

14 (b) TABLE OF CONTENTS.—The table of contents in
 15 section 2 of the Elementary and Secondary Education Act
 16 is amended by inserting after the item relating to section
 17 7012 the following:

“Sec. 7012A. Military education savings accounts.”.

18 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

19 Section 7014 of the Elementary and Secondary Edu-
 20 cation Act of 1965 (20 U.S.C. 7714) is amended by add-
 21 ing at the end the following:

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

24 “(1) there are authorized to be appropriated
 25 \$1,200,000,000 for fiscal year 2022; and

1 “(2) for each fiscal year beginning after fiscal
2 year 2022, the amount authorized to be appro-
3 priated shall be the amount authorized to be appro-
4 priated for the previous fiscal year increased by the
5 percentage increase in the Chained Consumer Price
6 Index for All Urban Consumers (as published by the
7 Bureau of Labor Statistics of the Department of
8 Labor) over the period of such previous fiscal year.”.

○