

MODERNIZING TAX INCENTIVES FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Can Section 127 Help Prepare Workers for the Future of Work?



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INTRODUCTION

At the start of 2020, the U.S. economy was experiencing the longest expansion on record, with a national unemployment rate of 3.6 percent.¹ By May, the economy had deteriorated rapidly as a result of the coronavirus pandemic. In the span of two months, the U.S. experienced such historic job losses that it reached an unemployment rate that exceeded the highest rate faced during the Great Recession.² While the depth and duration of the pandemic's impact on the labor market is not yet known, it is clear that as the economy reopens, the employment landscape will likely look substantially different than what existed before. The role that employers, policymakers, and other key stakeholders play in helping people find employment and develop new skills and competencies becomes even more urgent.

Prior to the coronavirus, the economy was already changing rapidly, with workers holding roles across different occupations and industries over the course of their careers. For today's workers, twelve years of childhood education is no longer sufficient to prepare for the continuously shifting demands of the labor market. Access to effective and affordable education and training is increasingly important for workers to learn, adapt, advance, and succeed in a variety of roles throughout their lifetime.

Through investments in a range of education and training programs, the U.S. government plays a critical role in building a skilled and competitive workforce. The federal government invested nearly \$14 billion for workforce and training programs across federal agencies in Fiscal Year 2017.³ In contrast, the federal government provided nearly \$70 billion in spending on postsecondary education in Fiscal Year 2018 and an additional \$39 billion in annual tax subsidies to support higher education.⁴ This aid is generally directed toward helping students pay for traditional postsecondary education. One of the few provisions that directly helps employers invest in their workers' education over the course of their career is the tax exclusion of employer-provided educational assistance benefits, which costs an estimated \$1.3 billion per year.⁵

- 1 Center on Budget and Policy Priorities. 2020. "Chart Book: Tracking the Post-Great Recession Economy." April. <https://www.cbpp.org/research/economy/chart-book-tracking-the-post-great-recession-economy>.
- 2 U.S. Bureau of Labor Statistics. "Unemployment Rate." Labor Force Statistics from the Current Population Survey. U.S. Department of Labor. Accessed May 28, 2020. <https://data.bls.gov/timeseries/LNS14000000>.
- 3 U.S. Government Accountability Office. 2019. "Department of Labor Should Assess Efforts to Coordinate Services Across Programs." March. <https://www.gao.gov/assets/700/698080.pdf>.
- 4 The total for spending on postsecondary education includes on-budget support, off-budget support and non-federal funds generated by federal legislation. National Center for Education Statistics. 2018. "Federal support and estimated federal tax expenditures for education, by category: Selected fiscal years, 1965 through 2018." Digest of Education Statistics. U.S. Department of Education. https://nces.ed.gov/programs/digest/d18/tables/dt18_401.10.asp?current=yes. The Joint Committee on Taxation. 2019. "Estimates of Federal Tax Expenditures For Fiscal Year 2019-2023." December. <https://www.jct.gov/publications.html?func=startdown&id=5238>.
- 5 The Joint Committee on Taxation. 2019. "Estimates of Federal Tax Expenditures For Fiscal Year 2019-2023." December. <https://www.jct.gov/publications.html?func=startdown&id=5238>.

This exclusion for educational assistance, which is located in Section 127 of the Internal Revenue Code, offers a tax-advantaged opportunity for companies to support their employees' pursuit of education. Added to the U.S. tax code in 1978, Section 127 provides a tax exclusion to the employee for up to \$5,250 per year, paid or reimbursed by an employer, for qualified educational assistance, including tuition, fees, and books. Unlike most other spending and tax incentives for education, employer-provided educational assistance is structured on the relationship between an employee and employer, like other workplace benefits offered through employment arrangements.

Employers are well positioned to understand which skills are in demand and the programs that are effective in equipping their employees with those skills. Section 127 is one tool that can help employers encourage their employees to pursue additional education and training. The role of Section 127 in encouraging greater investment can be particularly important in times of business downturns or recessions when employers are facing pressures to cut costs and employee benefits. However, little is known about the impact of Section 127 and how it is utilized by employers and employees, largely due to a lack of comprehensive data.

As policymakers wrestle with urgent questions around how to support employers and employees in our current economy and look at specific policies that incentivize employers to reskill and upskill their employees, this issue brief aims to examine one option—Section 127. The brief provides an overview of Section 127 and background on utilization based on the available data. In addition, the issue brief discusses potential reforms that could increase investment and better target education and training for workers in a changing economy, with the goals of building a skilled and competitive workforce and creating additional opportunity for economic mobility.

Overview of Section 127

Section 127 of the Internal Revenue Code

provides a tax exclusion to the employee for up to \$5,250 per year that employers pay or reimburse for qualified educational assistance.⁶ Educational assistance that qualifies under Section 127 is excluded from the employee's gross income and also from the employee's wages for the purposes of Social Security and Medicare payroll taxes. In addition to Section 127, two other provisions can apply to employer-provided educational assistance: Section 117, which applies to qualified scholarships, and Section 132, which includes educational and training benefits as part of a broader set of working condition fringe benefits (see Appendix A).

Eligible Employees: An employer's Section 127 program may only benefit their employees, though can also include: (1) retired, disabled, and terminated employees; (2) employees on leave; and (3) certain self-employed individuals.⁷ While employers are not required to provide Section 127 benefits to their employees, those who do must make these benefits available on a non-discriminatory basis that does not favor highly compensated employees. Employers may set guidelines for participation—such as only allowing employees to participate after a period of time with the employer—or set certain standards—such as a specific grade in a course—that would trigger reimbursement for the course or program.

Eligible Expenses: Section 127 covers costs associated with tuition, fees, books, supplies, and equipment. Benefits cannot include payment for tools or supplies that may be retained by the employee following completion of the course, or for meals, lodging, or transportation. Section 127 benefits do not limit the type of educational provider employers can select, and can apply to coursework with both accredited and non-accredited providers. It can be used for undergraduate and graduate education, as well as non-degree educational opportunities such as individual courses or coursework resulting in a

certificate. However, employers can design their Section 127 plans to limit eligible programs to specific institutions or in specific fields of study. Additionally, employers may opt to administer their educational assistance programs through an upfront payment model or reimbursement.⁸

Administrative Requirements: Employers that offer a Section 127 benefit are required to develop a written plan that includes the following information: (1) the maximum reimbursement amount; (2) requirements for eligibility; and (3) the reimbursement policy.⁹

History of Section 127: Section 127 was added to the Internal Revenue Code in 1978 (Public Law 95-600) as a five-year provision. The addition of Section 127 was based on two arguments. First, Congress believed that the existing law—which specified that educational assistance could be provided tax-free if it related directly to an employee's job—undermined “upward mobility” by acting as “a disincentive to continuing education, particularly among those at the lower end of the economic scale.”¹⁰ Second, Congress worried that current law “gave rise to inequitable administration [and] added to the complexity of the tax system,” as it was up to the Internal Revenue Service (IRS) to determine on a case-by-case basis as to whether an employer was providing educational assistance that related directly to an employee's job.¹¹

In 1986, the tax exclusion limit—originally set at \$5,000—was increased to \$5,250.¹² The use of this provision for graduate-level courses was not permitted at various points, but since 2001, payments for graduate courses have been allowed under Section 127.¹³ Until 2002, employers were required to submit an annual information return on their Section 127 programs to the IRS through Schedule F of Form 5500. There are no current reporting requirements. Congress extended Section 127 nine times before making the provision permanent in 2013.

6 The amount that the employer spends on education and training for their employees is a business expense and typically can be deducted by the employer.

7 “26 CFR § 1.127-2 - Qualified educational assistance program.” Retrieved from Legal Information Institute at Cornell Law School. <https://www.law.cornell.edu/cfr/text/26/1.127-2>.

8 UpSkill America and Pearson. 2019. Tuition Assistance Policy Discussion: Roadmap to a Skilled and Educated Workforce.” February. <https://assets.aspeninstitute.org/content/uploads/2019/02/Tuition-Assistance-Policy-Discussion.pdf>.

9 Manchester. 2008. “The Effect of Tuition Reimbursement on Turnover: A Case Study Analysis.” National Bureau of Economic Research. <https://www.nber.org/chapters/c9116>.

10 Joint Committee on Taxation. “General Explanation of the Revenue Act of 1978, H.R. 13511, 95th Congress, Public Law 95-600.” U.S. Congress.

11 Ibid.

12 In 1986, the average undergraduate tuition and required fees for all institutions was \$2,312. https://nces.ed.gov/programs/digest/d16/tables/dt16_330.10.asp

13 Office of the Law Revision Counsel. “26 USC 127: Educational assistance programs.” U.S. House of Representatives. Accessed February 26, 2020. [https://uscode.house.gov/view.xhtml?req=\(title:26%20section:127%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:26%20section:127%20edition:prelim)).

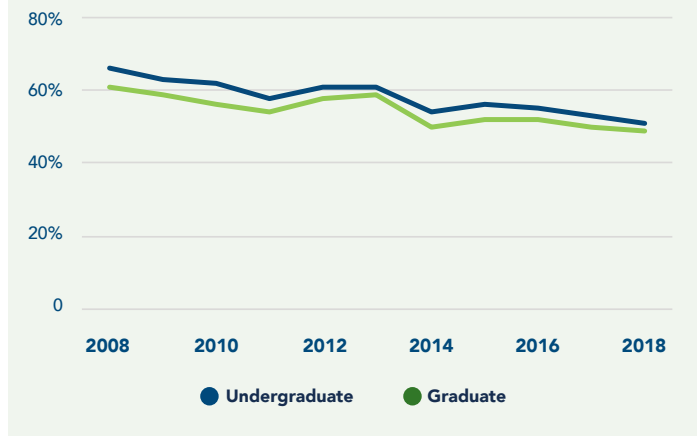
UNDERSTANDING UTILIZATION OF EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Though the data on Section 127 is limited and not regularly collected, researchers and policymakers can look to a few public and private data sources for information on the utilization of employer-provided educational assistance programs by both employers and workers. These sources do not specifically track outcomes of Section 127, but rather, provide information on the broader landscape of employer-provided educational assistance programs, including those that use Section 127 or other provisions of the tax code, or do not have any tax preference. Data from the Internal Revenue Service (IRS) is not available, as employers do not have reporting requirements with respect to their Section 127 benefits.

Employer Utilization of Educational Assistance Programs

Private data sources offer the most detailed information on employer utilization of educational assistance programs. The Society for Human Resource Management (SHRM)—a global membership organization for human resources professionals—administers an annual Employee Benefits Survey, which assesses over 250 benefits that employers offer to their employees. One of the trends that the SHRM survey has evaluated over time is whether employers offer educational assistance programs. Survey findings indicate that the share of employers offering educational assistance programs as a benefit to their employees has decreased from 66 percent in 2008 to 51 percent in 2018 (see Figure A). Experts have speculated that a decline in employers offering educational assistance could be attributed to economic downturns and shifts in how employers allocate resources across the full spectrum of benefits for their employees. In addition, past survey findings indicate employers with more than 500 employees provide education assistance at higher levels than smaller firms.¹⁴

Figure A: Share of Employers Offering Educational Assistance Benefits, 2008-2018



Note: Data indicates that this trend may have started prior to 2008. In 2004, surveys showed that 71 percent of employers offered educational assistance programs to their employees. However, SHRM data collected prior to 2008 contain statistically significant differences and therefore, are not comparable for the purposes of this analysis. In the 2019 Employee Benefits Survey, SHRM did not differentiate between undergraduate and graduate assistance.

Source: Society for Human Resource Management. "Employee Benefits." 2008-2019. <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/benefits19.aspx>.

¹⁴ Society for Human Resource Management, 2010. "2010 Employee Benefits." <https://www.shrm.org/hr-today/news/hr-news/documents/10-0280%20employee%20benefits%20survey%20report-fnl.pdf>.

Employee Utilization of Educational Assistance Programs

The U.S. Department of Education’s National Postsecondary Student Aid Study (NPSAS), conducted every four years, examines the characteristics of students in postsecondary education, with a focus on how they finance their education. Though not limited to the usage of Section 127 specifically, NPSAS provides information on which students are receiving employer-provided educational assistance and how much assistance they receive, among other variables. According to NPSAS data, there has been a decrease in the number of employees who are participating in employer-sponsored programs. The number of employees receiving educational assistance for undergraduate education from their employers fell from 1.58 million in 2004 to 1.16 million in 2016, and the number of employees receiving employer assistance for graduate-level education fell from 746,000 in 2008 to 259,000 in 2016.¹⁵

The NPSAS data show most of the decline in the number of students receiving employer-provided assistance occurred between 2008 and 2012, aligning with the Great Recession and its immediate aftermath. While it is uncertain how businesses will respond to the current economic crisis, many will face pressure to cut education assistance expenditures. Economic data on general business investment—which include physical capital and R&D—suggest that businesses significantly reduce their investment during recessionary periods.¹⁶

Analysis of the NPSAS data shows that the distribution of employer-provided educational assistance dollars are not representative of the distribution of the U.S. student population by race, income level, and program type (see Figures B, C, and D). Specifically, the data indicates that employer-provided educational assistance is disproportionately utilized by White and Asian students over Black or African-American and Hispanic or Latino students, by middle- and higher-income students over lower-income students, and by students pursuing bachelor’s and master’s degrees over those pursuing certificates and associate’s degrees.

Figure B: Distribution of Employer-Provided Educational Assistance, by Race, 2016

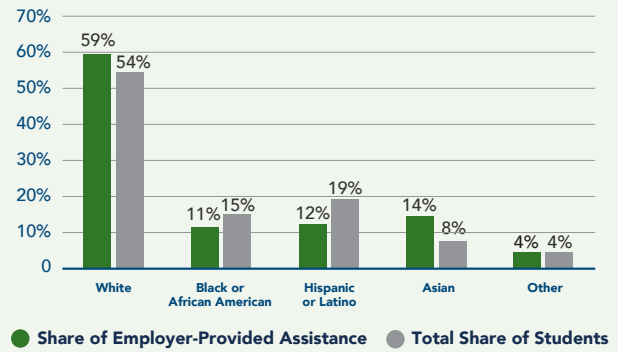


Figure C: Distribution of Employer-Provided Educational Assistance, by Income, 2016

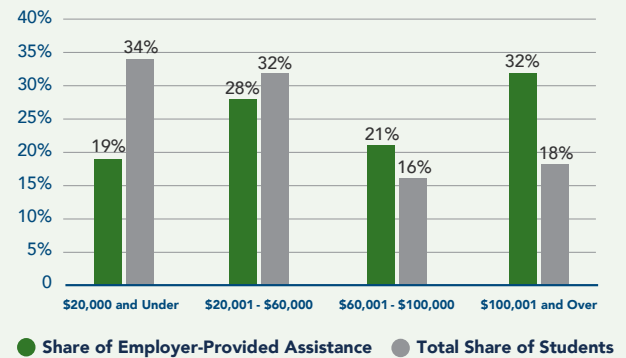
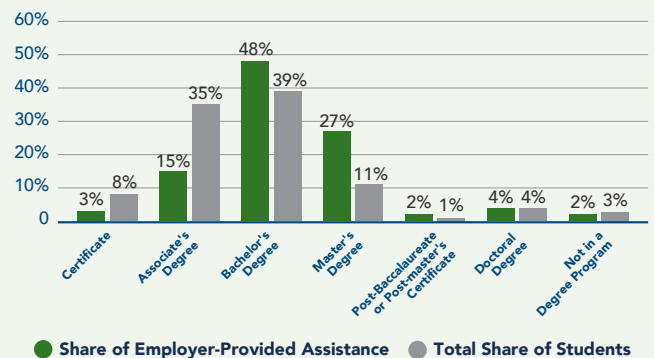


Figure D: Distribution of Employer-Provided Educational Assistance, by Type of Program, 2016



Source: Aspen Institute Future of Work Initiative analysis of National Postsecondary Student Aid Study 2016 (NPSAS:2016) data, using Trendstats tool at <https://nces.ed.gov/datalab/index.aspx>.

15 Aspen Institute Future of Work Initiative staff analysis of NPSAS data, using Trendstats tool at <https://nces.ed.gov/datalab/index.aspx>. 2004 data for graduate students is not available.

16 U.S. Bureau of Economic Analysis. "Private Nonresidential Fixed Investment." Retrieved from FRED, Federal Reserve Bank of St. Louis. Accessed March 21, 2020. <https://fred.stlouisfed.org/series/PNFI>.

RECOMMENDATIONS TO IMPROVE AND EXPAND DATA ON SECTION 127

While there are data sources that provide information about trends in the utilization of different types of employer-provided educational assistance, there is a lack of data that speaks to the impact of Section 127 plans specifically. This includes understanding how many employers are offering Section 127 plans, how many employees are participating in these programs and demographic information on participants, and what outcomes are resulting from their participation. Without answers to basic questions around employer and employee usage of Section 127, it is difficult to properly evaluate Section 127 and whether it is reducing or exacerbating racial and economic disparities. Similarly, this data is needed to evaluate whether Section 127 should be reformed, and if so, what type of reforms are necessary. Improved data would also provide information to employers who offer and design educational assistance programs, employees who utilize them, and educational institutions that provide programs to employees. Policymakers and employers can take steps toward improving data collection to address this gap.

1. Require Annual Information Return for Section 127 Programs

Until 2002, employers were required to annually submit information about their Section 127 programs. On Schedule F of Form 5500, employers would report: (1) how many employees the employer had, (2) how many employees were eligible for the Section 127 plan, (3) how many employees participated in the plan, (4) the total annual cost of the plan, and (5) whether or not the plan ended during the plan year.¹⁷ This reporting requirement was suspended by the IRS in 2002, and consequently, little administrative data exists on employer or employee usage of Section 127.¹⁸

In order to better understand how Section 127 is being used, the IRS could reinstate the collection of information from employers who offer education assistance as a benefit. The information reporting could use the questions from the annual information return that was used prior to 2002. This could help policymakers better understand how both small and large employers are utilizing the benefit. The IRS should consider adding additional questions about utilization of the provision, such as the demographics of employees who are utilizing Section 127 programs, the types of educational programs pursued, and employee completion of educational programs. With respect to any filing requirements, the IRS will need to carefully balance the desire for additional information against the burden that additional reporting puts on employers to collect and report the data, and the dampening effect that such burden might have on the availability of Section 127 programs.

2. Restart the Survey of Employer-Provided Training

The Survey of Employer-Provided Training (SEPT), conducted by the U.S. Bureau of Labor Statistics (BLS) in 1993 and 1995, provided detailed information on employer-provided training by major industry division and by size of establishment. The 1995 survey measured three different aspects of training: (1) the average number of hours of training per employee, (2) the average number of training activities per employee, and (3) the expenditures per employee in four selected spending categories, which were measured for the previous year.¹⁹ Employer spending on tuition reimbursement programs was one of the spending categories that the SEPT asked about, in addition to wages and salaries for in-house trainers, payments to outside trainers, and contributions to outside training funds.

Restarting and updating the SEPT would provide policymakers and researchers with a better understanding of employer investments in worker training. Members of Congress have recently tried to provide funding to restart this survey through the appropriations process, and language was included in a 2019 report from the House Appropriations Committee on the fiscal year 2020 Labor, Health

17 Businesses would report this information on Form 5500, Schedule F. For an archived version of this tax form, see: <https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2001-schedule-f.pdf>.

18 The IRS suspended the reporting requirement in IRS Notice 2002-24, stated that it "...is evaluating whether this method of reporting the information required by section 6039D is appropriate." The IRS never reinstated this reporting requirement. <https://www.irs.gov/pub/irs-drop/n-02-24.pdf>.

19 Bureau of Labor Statistics. 1996. "BLS Reports on the Amount of Employer-Provided Formal Training." U.S. Department of Labor. July. <https://www.bls.gov/news.release/history/sept1.txt>.

and Human Services, Education, and Related Agencies appropriations bill for the BLS to “continue research and work toward a new Survey of Employer Provided Training.”²⁰ If funding to restart the SEPT is provided, the BLS should consider asking employers to specify the portion of their overall training expenditures spent on their Section 127 programs. This would provide a more thorough understanding of the role of this tax provision in the broader employer training landscape.

3. Encourage Data Sharing & Collaboration

In addition to or in the absence of government data, there is also an opportunity for private sector data to strengthen our knowledge of how employers are utilizing educational assistance programs. While some industry and professional organizations have asked members for information on their educational assistance programs, these published surveys have typically lacked questions specifically related to Section 127. Standardized guidelines for both employer surveys and for voluntary reporting of data on educational assistance programs could be developed and encouraged by non-governmental organizations and private sector coalitions to facilitate comparison and analysis across employers and industries. In addition to voluntarily reported data, information could be collected through a broader public-private data standards collaborative.²¹

EVALUATING POLICIES TO REFORM SECTION 127

Potential reforms to modernize Section 127 are considered in the context of increasing employer investment in their employees, expanding employee utilization of education and training as a benefit, and advancing equity, with the broader goal of building a skilled and competitive workforce. The value of investing in human capital has been well documented, with higher levels of education and skill attainment, on average, corresponding to higher wages and lower unemployment, improved worker productivity, and increased pathways for upward mobility.²² Employers have valuable insights into skill needs and are therefore well positioned to channel resources toward valuable training and education opportunities. Educational assistance benefits can help meet strategic goals for businesses, including attracting and retaining workers, while also supporting workers in acquiring new skills and education throughout their careers. In pursuing the broad goal of increasing educational attainment and skill development of the U.S. workforce, the provision should create additional opportunity for economic mobility while also narrowing racial and economic disparities.

Employer-provided educational assistance can make the acquisition of new skills and competencies easier for workers who are offered this workplace benefit. Employer-provided educational assistance can cover all or some of the overall cost, reducing or eliminating the need for workers to rely on out-of-pocket expenses or loans to finance new opportunities. Like other employer-provided benefits that are excludable from taxable income—such as health care and many retirement savings plans—Section 127 shields employees from paying taxes on employer contributions towards education and training programs. With its flexible program design, Section 127 has made it simpler for employers and the IRS to administer a tax exclusion for educational assistance. Employers can utilize this flexibility to design their educational assistance programs in a range of ways, as demonstrated by the program examples listed in Appendix B. Coursework can be directly related to an employee’s current job, but also can offer access to skills development for future opportunities beyond an existing role or employer. As the economy changes and new technologies impact the skills needed in today’s labor market, employers can play a crucial role in helping employees determine the additional education and training that would be most useful in advancing their career.

20 U.S. House of Representatives. “Report of the Committee on Appropriations on H.R. 2740.” 116th Congress. Report 116-62. May 15, 2019. <https://www.congress.gov/116/crpt/hrpt62/CRPT-116hrpt62.pdf>.

21 For additional detail on data standards collaboratives, see the U.S. Chamber of Commerce Foundation’s report, Public-Private Standards Development and Use by Government, published December 2019: https://www.uschamberfoundation.org/sites/default/files/T3NetworkReport_PublicPrivateStandardsDevelopmentandUse.pdf.

22 Bureau of Labor Statistics. “Unemployment rates and earnings by educational attainment.” U.S. Department of Labor. Accessed March 4, 2020. <https://www.bls.gov/emp/tables/unemployment-earnings-education.htm>.

However, there are limits in the structure of Section 127 that affect the utilization of this provision. The current exclusion limit may not cover the full financial cost of an education program. While employers can opt to provide resources above the exclusion limit and cover the resulting tax burden for an employee, that calculation must be done on an individual basis and can be difficult to administer. Due to the flexibility given to employers in determining which programs and providers can be used by their employees, the quality of the providers may not be adequately assessed, and thus may lead to poor educational outcomes for workers. Although Section 127 prohibits employers from structuring their educational assistance program such that it is discriminatory in favor of highly compensated employees, data suggests that the utilization of these programs is more common among employees with higher levels of income and educational attainment. In addition to policies that can improve the ability to evaluate Section 127 and its impact, this section presents ideas to reform Section 127 to address some of the limitations of the provision.

Expanding the Exclusion Limit

While much has changed in terms of the cost of education and workforce development needs over the last forty years, Section 127 has remained remarkably stable. The tax exclusion amount, initially set at \$5,000, was increased to \$5,250 in 1986, at a time when the average undergraduate tuition and required fees for all institutions was \$2,312. The exclusion limit has remained at \$5,250 even as the average undergraduate tuition and required fees has increased to \$11,865 for 2015-16.²³ According to SHRM data, the average tuition assistance amount offered by employers in 2016 was roughly \$4,000, while 25 percent of employers offered assistance equal to \$5,250 or more.²⁴

In determining how the exclusion limit might be raised, there are a few approaches to structure the increase. The limit could be adjusted for inflation, accounting for the changing cost of living and the price of goods and services in the U.S. economy. Alternatively, the exclusion limit could be adjusted to better reflect the cost of education, which has increased at nearly quadruple the rate of inflation over the last 40 years.²⁵ However, online course options and new training providers have the potential to decrease education costs, and thus the exclusion limit should be evaluated over time.

Legislation to expand the exclusion limit under Section 127 has been introduced in the 116th Congress in the U.S. House of Representatives and, in previous Congresses, in both the House and the Senate. The bipartisan Upward Mobility Enhancement Act, introduced in the House in October 2019 would increase the maximum amount of the tax exclusion to \$11,500 and adjust the amount to account for inflation each succeeding calendar year.²⁶

When considering an increase to the exclusion limit, policymakers may also want to evaluate how to ensure that Section 127 is benefiting workers facing economic disadvantages, including workers with low levels of educational attainment and limited financial resources. The data proposals in the above section could give policymakers an improved understanding of how employer-provided educational assistance is used and who is receiving it. If additional data confirms that Section 127 is mainly benefiting higher wage and more highly skilled workers, the tax provision could be restructured to better target specific worker groups for educational assistance programs. For example, the exclusion limit could be set at a higher maximum amount for workers below a certain wage level or based on existing job classifications.²⁷ Furthermore, if data indicated that, for example, workers who had not earned a first credential were not

23 National Center for Education Statistics. "Average undergraduate tuition and fees and room and board rates charged for full-time students in degree-granting postsecondary institutions, by level and control of institution: 1963-64 through 2015-16." Digest of Education Statistics. U.S. Department of Education. https://nces.ed.gov/programs/digest/d16/tables/dt16_330.10.asp.

24 Society for Human Resource Management. 2016. "2016 Human Capital Benchmarking Report." November. <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/2016-human-capital-report.aspx>.

25 Aspen Institute Future of Work Initiative analysis of rates for full-time students U.S. Bureau of Labor Statistics. "Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL]." Retrieved from FRED, Federal Reserve Bank of St. Louis. Accessed February 24, 2020. <https://fred.stlouisfed.org/series/CPIAUCSL>.

26 U.S. House of Representatives. "H.R.4849 - Upward Mobility Enhancement Act." 116th Congress. Introduced October 23, 2019. <https://www.congress.gov/bills/116/house-bills/4849>.

27 Existing job classifications include: (1) exempt or non-exempt designations under the Fair Labor Standards Act, and (2) highly compensated or non-highly compensated workers, as defined by the IRS. Wage and Hour Division. "Wages and the Fair Labor Standards Act." U.S. Department of Labor. Accessed February 28, 2020. <https://www.dol.gov/agencies/whd/flsa>. Internal Revenue Service. "Retirement Plans: Definitions." U.S. Department of the Treasury. Accessed March 3, 2020. <https://www.irs.gov/retirement-plans/plan-participant-employee/definitions>.

benefiting from the program at the same rate as more highly educated workers, the exclusion limit could be set at a higher level for a first credential relative to a second or third.

However, such reforms would increase the complexity of administering Section 127 programs, which could in turn reduce the number of companies offering educational assistance programs. In addition, reforms that create a preference between a first credential and additional credentials could be perceived as a signal against pursuing additional education and the importance of training over the course of a worker's career. Educational assistance benefits must also be considered in the context of employers' overall benefit offerings, as employers may prioritize health care, paid leave, and retirement benefits in the face of an uncertain economy and as a result of policy requirements.

Finally, an expansion of Section 127 should lead to positive outcomes for workers. For example, if policymakers have concerns about the quality of the education provided under Section 127, raising the exclusion limit could be paired with a narrowing of eligible providers.²⁸ However, without additional data, it is difficult to assess how narrowing eligible uses of the provision would impact the overarching goal of increasing educational attainment. Currently, Section 127 allows employers to select the educational institutions or provider options that are available to their workforce, which can be comprised of a wide range of occupations. Creating additional requirements would reduce flexibility and could increase the complexity for companies administering Section 127 programs, which may dissuade some companies from participating.

Expanding Eligible Expenses Covered Under Section 127

While Section 127 encourages employers to invest in the education and training of their employees, working learners face challenges that extend beyond the cost of tuition and eligible materials. Policymakers should explore how Section 127 can enable employers to structure programs to maximize the potential of successful completion of coursework and credentials by their employees. For example, transportation and childcare support may allow workers to better access educational opportunities while they are working. Employers have the ability to provide pre-tax benefits to their employees for qualified transportation and dependent care services as part of a broader set of benefits.²⁹ Though not directly linked to educational opportunities, these benefits can reduce the financial burdens employees face for transportation and dependent care.

Due to the changing nature and structure of educational programs, the eligible expenses under Section 127 may not adequately reflect the needs of workers participating in educational programs. As courses are increasingly available online or have components that require online connectivity, lack of access to a computer, mobile phone, or internet connection can serve as a growing barrier, particularly for low-income workers. According to the U.S. Census Bureau, 11 percent of households lacked access to a computer in 2016, while 18 percent lacked an Internet subscription at home.³⁰ This problem is particularly acute among low-income households: 28 percent of households with less than \$25,000 in household income lacked access to a computer and 41 percent lacked an Internet subscription in 2016. In addition, Section 127 eligible expenses do not currently include payment for or the provision of tools or supplies which may be retained by the employee after completion of a course, though programs in the skilled trades may require the use of personal equipment and tools—such as drills or medical devices—for course completion.

To facilitate access for working learners who may not otherwise have the education-related technology and training tools that are necessary for instruction, the eligible expenses under Section 127 could be updated to account for additional materials. As an example in the tax code, Section 529—which outlines the qualified expenses that are included in tax-advantaged savings plans for higher education—includes

28 At present, the available data suggests that employers rely on accreditation as a proxy for quality. Four out of five employers now require that courses taken through the tuition assistance programs be regionally accredited. Whiteboard Advisors. 2017. "Investing in Talent." Commissioned by General Assembly. <https://generalassemb.ly/blog/employer-education-assistance-us-tax-code/>.

29 The Tax Cuts and Jobs Act, passed in December 2017, changed the employer tax treatment of transportation benefits. While employees can elect to receive qualified transportation fringe benefits (e.g., parking and transit) from their employer and are able to exclude these from their income, employers who offer transportation benefits are no longer able to deduct amounts incurred or paid for such fringe benefits. Under current law, workers can exclude up to \$5,000 from their income for employer-provided child and dependent care benefits, often as a flexible spending account. Legislation proposed in response to the COVID-19 crisis, the HEROES Act (H.R. 6800), which was passed by the U.S. House of Representatives in May 2020, would increase that limit to \$10,500.

30 Ryan, Camille. 2018. "Computer and Internet Use in the United States: 2016." U.S. Census Bureau, U.S. Department of Commerce. <https://www.census.gov/library/publications/2018/acs/acs-39.html>.

“computer or peripheral equipment” and “Internet access and related services,” among other expenses. However, some have raised concerns about the potential for fraud or abuse when adding eligible expenses to the tax exclusion; policymakers should evaluate that risk when designing potential reforms.

In recent years, there has been considerable attention on using the workplace benefits system to help workers repay their student loans. According to SHRM, 8 percent of employers offered student loan repayment as an employee benefit in 2019, up from 3 percent in 2015.³¹ Legislation to expand Section 127 to include student loans has been introduced this Congress and in prior sessions. The Employer Participation in Repayment Act, introduced in February 2019 in the U.S. Senate and the House of Representatives, would expand the tax exclusion for employer-provided educational assistance to include payments for qualified education loans.³² The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed on March 27, 2020 in response to the health and economic shocks created as a result of the COVID-19 crisis, included a provision to amend Section 127 to provide a tax exclusion for employer payments toward employees’ qualified education loans through January 2, 2021.³³ An increasing number of employers view providing employees with financial support for student loan debt as an important and attractive benefit. In the context of the coronavirus crisis, this provision also may incentivize employers to help provide workers with additional immediate financial relief. Though it is not yet clear how employers may adjust their benefit offerings in response to this provision, it presents an opportunity to better understand how the inclusion of student loans in Section 127 may change the design and utilization of employer-provided educational assistance overall and impact investment in new training programs.

CONCLUSION

Section 127 is one tax provision that exists within a broad set of government incentives and employer practices aimed at building a skilled and competitive workforce. The flexibility of Section 127 allows for employers to shape their educational assistance programs to meet the needs of their workforces, while also serving as an attractive benefit to employees. Yet despite a majority of U.S. employers reporting that they offer educational assistance programs, usage of these programs by employees remains relatively low.³⁴ Facing an uncertain economy, it is unclear how employers may prioritize this benefit going forward. In addition, as a provision that operates through the employer-employee relationship, Section 127 currently does not reach the millions of workers who are unemployed or those who lack a traditional employer. According to May 2017 data from the Bureau of Labor Statistics, more than one in ten American workers rely on non-traditional work for their primary job, and additional studies suggest millions more engage in non-traditional work to supplement their earnings.³⁵

There is an opportunity to update Section 127 to better reflect the needs of workers in the changing economy and to improve our understanding of the provision’s impact on educational attainment. Additional policies are needed to facilitate access to education and training opportunities for all workers, regardless of their employer or work arrangement. For example, worker-owned, tax-advantaged lifelong learning and training accounts can provide an incentive to both businesses and workers to fund education and training opportunities over the course of workers’ careers.³⁶ Preparing the workforce for the ways that work and the economy are changing requires a range of approaches. Policymakers should work to better understand and improve existing policies like Section 127, while considering new approaches to encourage and strengthen employer investment and employee flexibility in education and training.

31 Society for Human Resource Management. 2019. “2019 Employee Benefits.” <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/benefits19.aspx>. Society for Human Resource Management. 2018. “2018 Employee Benefits.” <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/2018-employee-benefits.aspx>.

32 U.S. Senate. “S.460 - Employer Participation in Repayment Act of 2019.” 116th Congress. Introduced February 12, 2019. <https://www.congress.gov/bill/116th-congress/senate-bill/460>. U.S. House of Representatives. “H.R.1043 - Employer Participation in Repayment Act of 2019.” 116th Congress. Introduced February 7, 2019. <https://www.congress.gov/bill/116th-congress/house-bill/1043>.

33 U.S. Congress. 2020. “Public Law No. 116-136.” 116th Congress. Enacted March 27, 2020. <https://www.congress.gov/bill/116th-congress/house-bill/748>.

34 Association for Talent Development. 2019. “2018 State of the Industry.” December. <https://www.td.org/research-reports/2018-state-of-the-industry>.

35 Bureau of Labor Statistics. 2018. “Contingent and Alternative Employment Arrangements – May 2017.” U.S. Department of Labor. June. <https://www.bls.gov/news.release/pdf/conemp.pdf>. To learn more, visit the Gig Economy Data Hub at www.gigeconomydata.org/.

36 For additional information on Lifelong Learning and Training Accounts, see: Fitzpayne, Alastair, and Ethan Pollack. 2018. “Lifelong Learning and Training Accounts: Helping Workers Adapt and Succeed in a Changing Economy.” Aspen Institute Future of Work Initiative. May. <https://www.aspeninstitute.org/publications/lifelong-learning-and-training-accounts-2018/>.

Appendix A: Comparison of Tax Policy Provisions that Incentivize Employer-Provided Educational Assistance

	Section 127 Qualified Educational Assistance ³⁷	Section 132(d) Working Condition Fringe ³⁸	Section 117(b) Scholarships ³⁹
Annual Cost	\$1.3 billion ⁴⁰	N/A ⁴¹	\$3.5 billion (includes all scholarships, not just those provided by an employer)
Administrative Requirements	Written plan	No written plan	Written plan
Eligible Expenses	Tuition, fees, and similar payments, books, supplies, and equipment. Cannot include tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation.	Tuition, books, supplies, equipment, certain travel and transportation costs.	Tuition, fees, books, supplies, and equipment required for instruction
Eligible Programs	Degree or non-degree	Degree or non-degree	Degree
Eligible Individuals	Current employees; retired, disabled, and terminated employees; employees on leave; and certain self-employed individuals. ⁴²	Current employees or independent contractors.	Current employees; retired or disabled former employees; dependent children or spouses of an employee; or widow(er)s of an employee who retired, left on disability, or died while employed.
Qualified Educational Institution	Any	Any	Educational institutions that qualify for charitable giving for tax purposes
Relates to Job	Not required	Required	Prohibited, with exceptions ⁴³
Non-Discrimination Protection	Yes	No	Yes
Dollar Limit	\$5,250 per calendar year	None	None

37 "26 U.S. Code § 127. Educational assistance programs." Retrieved from Legal Information Institute at Cornell Law School. <https://www.law.cornell.edu/uscode/text/26/127>.

38 "26 U.S. Code § 132. Certain fringe benefits." Retrieved from Legal Information Institute at Cornell Law School. <https://www.law.cornell.edu/uscode/text/26/132>.

39 "26 U.S. Code § 117. Qualified scholarships." Retrieved from Legal Information Institute at Cornell Law School. <https://www.law.cornell.edu/uscode/text/26/117>.

40 The Joint Committee on Taxation. 2019. "Estimates of Federal Tax Expenditures For Fiscal Year 2019-2023." December. <https://www.jct.gov/publications.html?func=startdown&id=5238>.

41 The tax expenditure "Exclusion of miscellaneous fringe benefits" costs \$8.1 billion, but this includes a variety of fringe expenses, not solely educational expenses.

42 Internal Revenue Service. 2019. "Publication 15-B: Employer's Tax Guide to Fringe Benefits for Use in 2020." Department of the Treasury. December. <https://www.irs.gov/pub/irs-pdf/p15b.pdf>.

43 Teaching, research, or other services can be provided to the scholarship grantor if they are required of all candidates (whether or not recipients of scholarships or fellowship grants) for a particular degree as a condition to receiving the degree. <https://www.law.cornell.edu/cfr/text/26/1.117-2>.

Appendix B: Examples of Employer-Provided Educational Assistance Programs

Based on current law, employers have flexibility to structure educational assistance programs that utilize Section 127. Drawing on public information available in June 2020, the program examples in this chart reflect how large employers in a variety of industries have structured their educational assistance programs. Upon publication of this issue brief, it is possible that the structure of these programs may have changed.

AMAZON: Career Choice	
Eligibility Requirements	Hourly associates who have been employed for one continuous year can participate in the program.
Educational Programs & Institutions	Through Amazon’s educational partner network, consisting of both on-site and off-site programs, hourly associates can earn certificates and associate degrees in occupations designated high-demand in the area that they are presently working, such as aircraft mechanics, commercial driving, machine tool technologies, and nursing.
Amount Covered	Amazon will pay up to 95% of tuition and fees up to \$3,000 each year (for up to 4 years) for tuition, textbooks, and associated fees.
Program Participation	As of March 2020, the company has stated that more than 16,000 associates have participated in the Amazon Career Choice program across 10 countries since the program was established in 2012.
BOEING: Learning Together Program	
Eligibility Requirements	Full-time and part-time team members have the opportunity to participate after one year of company service.
Educational Programs & Institutions	Team members can pursue education through degree programs, professional certificates, and individual courses in strategic fields of study at more than 270 accredited colleges and universities.
Amount Covered	If employees are enrolled in eligible science, technology, engineering and mathematics degree and certificate courses, there is no annual limit on tuition assistance provided by the company.
CHIPOTLE: Cultivate Education	
Eligibility Requirements	Employees in management positions become eligible on their first day of employment; crew members must be employed with Chipotle for at least 120 days (and work an average of not less than 15 hours per week) before a course start date.
Educational Programs & Institutions	Employees can pursue high school completion, college prep classes, certificates, credits for on-the-job training, undergraduate degrees, and master’s degrees.
Amount Covered	Chipotle provides Debt-Free Degrees and Tuition Assistance, which feature upfront payment for programs offered with support from Guild Education. Chipotle will cover 100% of tuition costs for Debt-Free Degree programs. If employees choose to enroll in programs that are outside of the Guild network of programs, tuition reimbursement is available and the company will cover up to \$5,250 per calendar year for eligible programs.

HUNTINGTON INGALLS: Newport News Shipbuilding Education Assistance Program

Eligibility Requirements	To participate, employees must work a minimum schedule of 20 hours per week and be eligible for full company benefits.
Educational Programs & Institutions	Degrees and credentials pursued must meet an established business need, enhance the employee’s capability in their current job, and/or prepare the employee for a future opportunity. Courses must be taken with an accredited college or university.
Amount Covered	The education reimbursement cap is \$5,250 per calendar year.

JETBLUE: JetBlue Scholars and Master’s Pathways

Eligibility Requirements	JetBlue Crewmembers are eligible for the program if they have two years of service with JetBlue and have at least 15 prior college credits earned from an accredited two-year or four-year college in the U.S. or abroad.
Educational Programs & Institutions	Crewmembers can take online undergraduate courses offered through Thomas Edison State University and other online providers, and master’s degree programs offered through five regionally accredited institutions. The JetBlue Scholars program offers 190 undergraduate courses and 30 different graduate degrees and specializations.
Amount Covered	Information not publicly available
Program Participation	As of 2019, over 1,000 Crewmembers have participated in the JetBlue Scholars program and over 185 undergraduate degrees have been conferred through the program. JetBlue has stated that JetBlue Scholars had a 93 percent average course completion rate.

MCDONALD'S: Archways to Opportunity (Affordable Paths to College)

Eligibility Requirements	McDonald's employees eligible for educational assistance programs include those who are a (1) McOpCo full-time Store Manager Trainee, Certified Swing Manager, Department Manager, or General Manager; and (2) McOpCo restaurant Crew, Floor Supervisor, Shift Manager Trainee, Primary Maintenance, or other part-time employee.
Educational Programs & Institutions	Through Archways to Opportunity, McDonald's workers can enroll in a two- or four-year public or private college or university; business, technical or vocational school; graduate or post-graduate school. Courses must be taken at a degree or certificate granting college or university, accredited by the U.S. Department of Education.
Amount Covered	McDonald's offers \$5,250 in assistance for full-time manager-level employees and offers \$2,500 for restaurant crew and part-time employees.
Program Participation	As of March 2020, McDonald's stated that more than 40,000 restaurant employees in the U.S. have enrolled in a program through Archways to Opportunity since April 2015.

STARBUCKS: Starbucks College Achievement Plan

Eligibility Requirements	Starbucks partners who are based in the U.S. working an average of 20 hours per week at any company-operated store and who do not yet have a bachelor’s degree are eligible for this program.
Educational Programs & Institutions	The Starbucks College Achievement Plan includes over 80 undergraduate degree programs online through Arizona State University.
Amount Covered	After scholarships and financial aid, the program provides 100% tuition coverage for a first-time bachelor’s degree offered through Arizona State University’s online program. Starbucks notes that it expects to contribute approximately \$3,000-\$4,000 per year, per partner, to provide full tuition coverage as they work towards achieving their degree.

T-MOBILE: Tuition Assistance

Eligibility Requirements	Active full-time and part-time employees can participate in the program after 90 days of employment.
Educational Programs & Institutions	To receive reimbursement, the school must be a regionally accredited institution. T-Mobile also offers 100% up-front tuition assistance with five online universities.
Amount Covered	Full-time employees are eligible for the IRS maximum non-taxable benefit of \$5,250 per calendar year. Part-time employees are eligible for \$2,500 per calendar year.

WALMART: Live Better U

Eligibility Requirements	Part- and full-time Walmart and Sam's Club associates are eligible for Live Better U on their first day of employment.
Educational Programs & Institutions	The Live Better U program offers bachelor's degrees, associate's degrees, and certificates, in the fields of business, supply chain, technology, health care, in-demand skilled trades, and digital skills. In addition, the program offers college prep, high school, and language programs.
Amount Covered	Walmart will subsidize the cost of higher education, offering debt-free degrees beyond financial aid and an associate contribution equal to \$1 a day. Each year, up to 5,000 associates who have not previously completed college credits will be eligible for completion awards, valued at \$1,500 each.
Program Participation	As of June 2020, more than 25,000 Walmart and Sam's Club associates have pursued educational offerings, including \$1 a day college degrees and free high school completion, since the program's launch in June 2018.

WALT DISNEY: Disney Aspire

Eligibility Requirements	Part-time hourly employees and Cast Members in the U.S. are eligible for the Disney Aspire program.
Educational Programs & Institutions	The Disney Aspire program includes learning a trade, growing language skills, earning a high school diploma, or earning an associate's, bachelor's, or master's degree at 13 educational institutions.
Amount Covered	The program covers 100% of tuition at in-network schools and will reimburse for application fees and required books and course materials. Disney will also gross-up participating employees' wages to account for taxes withheld for education benefits in excess of \$5,250 annually.
Program Participation	In August 2019, Disney stated that in the program's first year, more than 8,000 employees and cast members had enrolled to participate in classes.

AMAZON

<https://www.aboutamazon.com/working-at-amazon/career-choice>

<https://www.aboutamazon.com/amazon-fulfillment/our-fulfillment-centers/training>

BOEING

<https://jobs.boeing.com/building-leaders>

<https://jobs.boeing.com/benefits>

CHIPOTLE

<https://s3-us-west-2.amazonaws.com/documents.guildeeducation.com/chipotle/Cultivate+Education+FAQs.pdf>

HUNTINGTON INGALLS

<https://nns.huntingtoningalls.com/wp-content/uploads/2017/06/Education-Assistance-Fact-Sheet.pdf>

JETBLUE

<http://www.mediaroom.jetblue.com/investor-relations/press-releases/2019/06-13-2019-175952903>

MCDONALD'S

http://www.archwaystoopportunity.com/tuition_assistance.html

STARBUCKS

<https://www.starbucks.com/careers/working-at-starbucks/education>

<https://stories.starbucks.com/stories/2019/starbucks-college-graduates-where-are-they-now/>

T-MOBILE

http://livemagenta.com/assets/pdf/Benefits_Education_Assistance_FAQs.pdf

WALMART

<https://corporate.walmart.com/newsroom/2020/06/10/walmart-expands-education-program-for-associates-aligns-live-better-u-program-to-future-of-work-with-additions-of-skilled-trades-and-digital-programs>

<https://corporate.walmart.com/newsroom/2019/09/24/walmart-adds-healthcare-to-live-better-us-college-offering-as-the-retailers-health-wellness-strategy-evolves>

<https://corporate.walmart.com/newsroom/2019/06/04/walmart-adds-14-tech-degrees-certificates-to-live-better-u-college-offering-expands-debt-free-college-to-high-schoolers-and-creates-graduation-bonuses>

WALT DISNEY

<https://thewaltdisneycompany.com/disney-aspire-adds-purdue-university-global-and-southern-new-hampshire-university-to-its-network-of-educational-providers/>

<https://thewaltdisneycompany.com/disney-aspire-marks-an-incredible-life-changing-first-year/>

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