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December 15, 2025

Public Comment on IRS-2025-0466: Federal Scholarship Tax Credit Regulation

FROM: Sarah Parshall Perry, Vice President, Defending Education

TO: U.S. Department of the Treasury and Internal Revenue Service

RE: Docket ID, IRS-2025-0466

To Whom it May Concern:

Defending Education (DE) is a national grassroots organization dedicated to securing a high-quality, value-neutral education for every American student. Our organization consists of parents and students in K-12 and higher education programs across the country, all of whom have a vested interest in the outcome of the Treasury Department's and the Internal Revenue Service's proposed regulations to implement the new § 25F of the Internal Revenue Code, as added by § 70411 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA).

Section 25F provides a new national tax credit for an individual's qualified contribution to a certified scholarship granting organization (SGO) (as defined in § 25F(c)(5)) that provides qualified elementary and secondary scholarships. We applaud the Treasury Department and IRS for soliciting comments related to potential issues that might arise under § 25F that should be addressed in guidance, including but not limited to 1) annual certification by a State electing to participate, 2) SGO recognition and reporting requirements, 3) the definition of an SGO and determination of an SGO's "state location," and 4) the interaction of the federal scholarship tax credit (FSTC) with state school tax credits, among others.

As in initial matter, DE supports what is certain to be a transformative step toward empowering families with genuine school choice by enabling low- and middle-income households to access high-quality educational opportunities that best meet their children's needs. By facilitating scholarships for any combination of private, charter, or other non-public school opportunities, the first-of-its kind nationwide school-choice initiative will foster competition, innovation, and excellence in education. In turn, students, educators, and communities nationwide will directly benefit. However, to realize these benefits fully, the final regulation must prioritize simplicity, equality, feasibility, and compatibility with existing state programs.

The provisions that emerged from the passage of the OBBBA in July differ from what its drafters intended. Among other notable distinctions, it requires states *to opt in* to participating in the initiative, rather than mandating it from coast to coast. The enacted legislation also no longer explicitly includes a prohibition on states imposing their own requirements on SGOs if those states choose to opt in. Both alterations are problematic in their own right. Below, we address these distinctions and outline key rulemaking recommendations to ensure the program's success.

Minimize the Regulatory Burden on SGOs

A cornerstone of this regulation should be a low regulatory footprint to encourage broad participation without unnecessary administrative hurdles. Scholarship granting organizations—often nonprofit entities already operating under rigorous state oversight—should not be required to navigate excessive federal approval processes, reporting mandates, or record-keeping obligations. Basic attestation of compliance with core eligibility criteria would suffice to verify SGOs' legitimacy and prevent fraud. Overly prescriptive requirements risk deterring smaller or emerging SGOs, reducing the pool of available scholarships and undermining the program's goal of expanding access. By keeping federal involvement light-touch, we can leverage the proven track record of state-regulated SGOs, allowing resources to flow directly to families rather than bureaucratic compliance.

Additionally, Treasury ought to remove the states' role in verifying SGOs' eligibility for participation. The statute does not assign states any investigative or certification authority but simply directs states to "provide to the Secretary a list of the scholarship granting organizations that meet the requirements described in subsection (c)(5) and are located in the State." Requiring states to certify compliance creates two significant concerns: 1) the creation of both bureaucratic hurdles and opportunities for political bias; and 2) implication that state officials have some liability should an SGO not perform as planned—an outcome that would necessarily discourage participation. Instead, Treasury should require SGOs to submit a sworn compliance affidavit attesting that they meet all statutory requirements. This approach ensures accountability and legal enforceability without introducing a state-level process—keeping governmental involvement at the state and federal level to a minimum.

Should Treasury assign states the role of verifying SGOs' eligibility, however, it must establish a process for SGOs to appeal their exclusion.

Protect Married Families from Indirect Penalties

The Treasury regulation must explicitly authorize a family tax credit of $3,400 for married couples filing jointly, rather than limiting it to an individual credit of $1,700, thus indirectly penalizing married individuals who would otherwise be able to claim the tax credit separately. This structure aligns with the program's family-centric intent and avoids inadvertently penalizing two-parent families—a regressive outcome that contradicts the underlying principles of school choice and parental involvement on the whole. Many families seeking scholarships consist of two-parent households that make collective sacrifices for their children's education; capping their credit at the individual level would disproportionately burden them, exacerbating income disparities. Clear regulatory language permitting the doubled credit for joint filers is essential to ensure fairness and maximize participation.

Preserve and Maximize State School Choice Programs

Critically, the FSTC must not encroach upon or diminish robust state-based school choice initiatives, many of which rely on complementary tax credits or vouchers. States like Florida, Arizona, and Iowa have demonstrated the power of these programs to deliver results, with millions of students thriving through expanded options. The federal program should operate in harmony with extant state programs and allow donors to claim both federal and state credits to the fullest extent possible—without offsets, caps, or coordination mandates that could erode state incentives.

This additive approach would amplify resources for families, encouraging states to innovate while providing a federal backstop. Any design that indirectly supplants state efforts risks fragmenting the national school choice landscape and limiting overall impact.

Leverage Existing SGOs and Provide Flexibility for Non-Participating States

To avoid unnecessary proliferation of entities, the regulation should discourage families or donors from establishing bespoke SGOs, instead directing contributions to established, vetted organizations with proven distribution expertise. For instance, the Children's Scholarship Fund, incorporated in New York, has successfully awarded over $100 million in scholarships since 1998, serving families across multiple states. Such multistate SGOs should be fully eligible to administer federal scholarships nationwide, regardless of a donor's or recipient's state of residence. This promotes efficiency and scalability. Moreover, if certain states elect not to opt-in to the federal program—perhaps due to fiscal or policy preferences—alternatives must be readily available. State-based SGOs in opting-in states should be empowered to extend scholarships to families in non-participating states, ensuring no child is left behind by geographic happenstance. Federal guidance clarifying this cross-border eligibility would prevent silos and uphold the program's universal promise.

To that end, Treasury should clarify in its forthcoming regulation that any SGO "located in a state" means "registered to do business in a state and complying with state law," including any requirements for soliciting charitable contributions. Treasury locus requirements for participating SGO's ought not require those SGO's to be headquartered in or physically located in that state to distribute scholarships funded by FSTC donations. A state's normal business law applicable to nonprofits should apply.

Clarifying Prohibitions on "Disqualified Persons"

Section 25F(d)(2) prohibits an SGO from awarding a scholarship to any "disqualified person" and provides that a disqualified person is determined pursuant to rules similar to the rules of § 4946 of the tax code (relating to private foundations). Section 4946 provides that "substantial contributors" to a private foundation are considered disqualified persons; specifically, any person that made contributions during the taxable year in the aggregate of at least $5,000, if that amount is more than two percent of the total contributions the foundation or organization received from its inception through the end of the taxable year in which that person's contributions were received.

DE agrees that the best approach is for Treasury to adopt the same threshold for disqualification under § 25. In other words, disqualification of major donors would be defined as those giving $5,000 to an SGO, if such amount is more than two percent of the total contributions to that SGO. For example, a two percent or lower cap would yield the following outcome: if an SGO received fewer than 51 donations in a year, every donor who gave the maximum of $1,700 would be disqualified from participation in the program. In practice, this would prevent small SGOs from opening and serving local families and frustrate Congress's aims in enacting the law.

Additionally, the clear statutory language of the OBBBA indicates that Congress wanted to prevent conflicts of interest and self-dealing by disqualifying FSTC participation by certain people. Officers, directors, and trustees (as well as their immediate families) are therefore justifiably disqualified, with

limited exceptions. But in certain circumstances, an SGO board member's child should be allowed to receive an award in the absence of a conflict.

For example, where scholarship applications are reviewed using blind or anonymized procedures—such as committee review without identifying information, randomized selection processes, or computer-based scoring, the otherwise qualified children of SGO board members should be able to benefit from SGO awards. Similarly, a board member's child should not be excluded if all students are treated uniformly: when, for example, an SGO awards every eligible child the identical amount. Treasury must be mindful of ensuring maximum participation in the FSTC and avoid regulatory pitfalls that could leave certain children without otherwise widely available educational opportunities.

Safeguard Religious and Diverse Educational Options

Finally, the regulation must proactively protect religious educational institutions from indirect penalties in states that opt to participate. Governors and legislators should not wield discretion to approve only those SGOs that prioritize public or charter schools, as this could exclude faith-based providers that serve diverse communities and deliver exceptional outcomes.

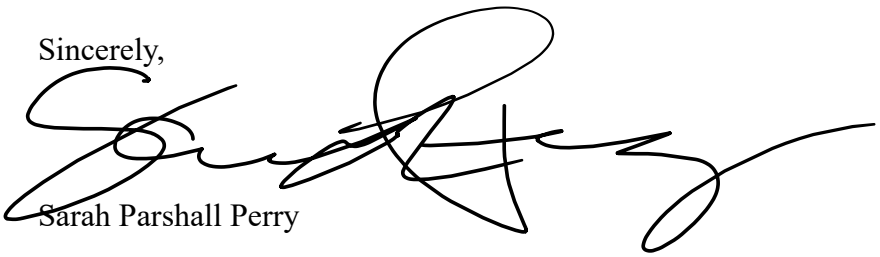
To prevent such discrimination, the Treasury should clarify that eligible SGOs also include organizations that primarily distribute scholarships for religious educational institutions. This neutral stance aligns with First Amendment principles and empirical evidence showing religious schools' vital role in school choice ecosystems. By design, the program should empower parents to select the best educational fit for their values and needs—whether that is a public, charter, private, or religious school—and not steer them toward government-preferred models.

In conclusion, IRS-2025-0466 holds immense potential to supercharge school choice, but its success hinges on a regulation that is simple, family-friendly, feasibly implemented, and religiously inclusive. By adopting these recommendations—low barriers for SGOs, equitable credits for married families, synergy with state programs, reliance on existing organizations, flexibility across state lines, and protection for religious options—the Treasury can craft a durable framework that elevates educational outcomes for every child.

We urge swift finalization of rules that prioritize these principles and invite further dialogue on implementation.

Thank you for considering this comment. I look forward to the positive impact of a well-crafted federal scholarship tax credit program.

Sincerely,



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