DEFENDING EDUCATION

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November 20, 2026

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

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

FROM: John Schilling, Senior Advisor, Defending Education

RE: REG-117199-25

Section 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).

To Whom it May Concern,

Defending Education (DE) is a national grassroots organization working to restore free speech and the free exchange of ideas across K-12 and higher education while keeping political ideology and activism out of our schools. We believe that education freedom - allowing all K-12 parents to choose the best educational environment for their children - is an inherent right and the new federal scholarship tax credit (FSTC) law is a means to secure this right for American families.

Reviewing the Temporary Rules and the Notice of Proposed Rulemaking (NPRM), we applaud the Treasury Department's commitment to upholding congressional intent and the seriousness with which they considered comments from all stakeholders, including Defending Education. The FSTC is tax law, not education law. The beneficiaries of the law are taxpayers whose contributions to eligible non-profit scholarship granting organizations (SGOs) will fund scholarships and K-12 students who will receive scholarships for a variety of allowable educational uses chosen by their parents.

These rules will help ensure successful implementation of 25F. They provide States and SGOs with all the information needed to participate; they will maximize the number of taxpayers who can contribute; and most importantly, they are written to maximize the number of students who will benefit.

Our December 15, 2025 comment letter focused on five areas:

<u>Minimize the Regulatory Burden on SGOs</u>

We stressed the importance for the regulations to have a small regulatory footprint to encourage broad participation without unnecessary administrative hurdles.

We applaud Treasury's proposed § 1.25F-5(e)(2) which would prohibit covered States from imposing requirements on SGOs that are more restrictive than the requirements in section 25F(c)(5). There is nothing in the federal law that would allow States to impose additional and burdensome regulations on SGOs that would only depress the number of SGOs participating and thus depress the number of K-12 students benefitting from this federal opportunity.

Our recommendation was to allow SGOs to self-certify. Basic attestation of compliance with core eligibility criteria would suffice to verify SGOs' legitimacy and prevent fraud. The statute 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."

Treasury opted to require States to certify SGOs. Treasury should consider developing a uniform check list of what is necessary for state certification of SGO compliance. This would re-state the specific requirements in 25F and ensure States do not add additional requirements.

In the Proposed Regulations, Treasury says "upon discovering a pattern of irregularities" the IRS may require a state to modify its procedures. We applaud Treasury requiring SGOs who want to participate in 25F to register on the Treasury portal. We encourage Treasury to cross-reference SGOs in the portal with the lists submitted by the State to ensure all SGOs who wish to participate and meet the requirements of the federal law are included on the State list. It is also imperative for Treasury to establish a clear appeals process in the final rules should a State attempt to restrict participation by leaving qualified SGOs off the list. This is a back door way for States to restrict participation by education sector which violates § 1.25F-5(e)(2).

Protect Married Families from Indirect Penalties

We applaud Treasury's determination that a married couple filing jointly may contribute $3400 to an SGO, provided that each spouse has made a qualified $1700 contribution. It was not intent of the law to impose a marriage penalty. This structure aligns with the law'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 overall. We agree that the tax code and regulations thereunder have long recognized that a joint return consists of two taxpayers, unless there is express statutory language to the contrary.

Preserve and Maximize State School Choice Programs

We argued that rules for 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. 25F should operate in harmony with extant state programs and allow donors to fully claim both federal and state credits—without offsets, caps, or coordination mandates that could erode state incentives.

We understand Treasury's interpretation in states with existing tax credit scholarship programs, to "view the State credit reduction as intended to prevent a taxpayer from receiving combined Federal and State tax benefits exceeding the value of the taxpayers qualified contributions". We agree this should not limit the Section 25F credit for taxpayers in those states because to do so would discourage those states from participating. We acknowledge this is an issue only for donors wanting to make a single contribution in the eight states with existing scholarship tax credit programs and less than a 100% state credit. We also acknowledge that donors could make separate contributions to claim the full federal and state credits.

Leverage Existing SGOs and Provide Flexibility for Non-Participating States

We agree that Treasury is right to define located in a state to mean registered to do business in a state. This will allow and encourage multi-state SGOs to participate in the federal opportunity. Proposed § 1.25F-1(a)(10) would, for purposes of section 25F, define an organization as "located in a State" if the organization is authorized to do business in the State and is in compliance with the generally applicable State laws and requirements for charitable organizations in the State.

However, section 1.25F-3(c)(7) of the proposed regulations says that "solely within the State" refers to the residency of the student, rather than the location where the student attends school or otherwise procures the items or services paid for with scholarship funds. This interpretation will negatively affect students who attend cross-border schools in non-covered state, and we encourage Treasury to reconsider and allow these students to participate.

Clarifying Prohibitions on "Disqualified Persons"

The proposed regulations provide that any person who contributed an aggregate amount of more than $5,000 to a section 25F segregated account during the taxable year, if such amount is more than 2 percent of the total contributions received by the section 25F segregated account during the taxable year, is a substantial contributor.

The proposed regulations also state that officers, directors, trustees, and individuals with similar powers and responsibilities are disqualified persons, along with members of their families. The proposed regulations also provide that any individual participating in, including as a member of a committee, the selection of scholarship recipients or the determination of scholarship awards, and members of their families, are considered disqualified persons.

25F language makes clear that Congress wanted to prevent self-dealing, conflicts of interest, and donors directing scholarships toward particular children. However, in limited and well-documented circumstances, we believe an SGO board member's child should be allowed to receive an award if there is no conflict. This includes situations where scholarship applications are reviewed using blind or anonymized procedures—such as committee review without identifying information, randomized selection processes, or computer-based scoring.

We disagree with adding siblings and their descendants in the list of disqualified persons. In the IRS definition of a "member of the family" A member of the family includes any spouse, ancestors, children, grandchildren, great grand-children, and spouses of children, grandchild-ren, and great grandchildren. A brother or sister of an individual is not a member of the family for this purpose: https://www.irs.gov/charities-non-profits/charitable-organizations/member-of-the-family

Safeguard Religious and Diverse Educational Options

We recommended that Treasury clarify that eligible SGOs include those that primarily distribute scholarships for religious educational institutions. This neutral stance aligns with First Amendment principles and with the reality that families in states with private school choice programs often choose religious schools.

The law clearly says, "a State may not require SGOs to operate in a manner that is more restrictive than the requirements set forth in section 25F(c)(5) and § 1.25F-3(b) and (c), such as by limiting the type of school that scholarship recipients may attend or the types of qualified elementary or secondary education expenses for which scholarship funds may be used".

Treasury has affirmed in rule that an SGO is eligible to participate if they meet the requirements in 25F and that States may not impose additional burdens on SGOs beyond what is included in the federal law. Treasury will also require all SGOs to register with the Treasury portal. Again, we encourage Treasury to cross-reference SGOs who register with the federal portal with SGO lists submitted by States and to ensure there is a viable appeals process should an eligible SGO be left off the list.

Issues Where Treasury Has Requested Comment

Digital Wallet

Treasury and the IRS have requested comments on the definition of qualified digital wallet and whether additional regulation is needed to verify whether scholarships are spent on qualified expenses.

The proposed § 1.25F-1(a)(13) defines a "qualified digital wallet" as an electronic payment platform in which a third-party provider provides a streamlined interface for managing the administration of section 25F scholarships by having eligible students and their families submit purchase requests, by tracking approved expenses, and by maintaining controls to ensure that all payments are made for qualified elementary or secondary education expenses by pre-approving vendors and paying vendors directly or requiring timely submission of receipts. We do not believe additional regulation is needed.

Section 530 Expenses

Treasury and IRS should not prevent families from choosing non-school after-school providers unless they are contracted by a "school". We believe the clear intent of Congress was for parents to be able to choose the best education service for their child rather than having that decision made by a school.

Coverdell accounts may be used for some expenses "which are incurred in connection with the enrollment or attendance" at a school, and other expenses, such as extended-day programs, only when they "are required or provided by a…school." If Treasury interprets this strictly, families would not be able to choose extended day or after-school enrichment programs such as those offered by Boys & Girls Clubs, Big Brothers/Big Sisters, YMCAs, and hundreds of community-based organizations unless they are first approved or under contract by their child's "school." We believe this interpretation over-reads the law's cross-reference to IRC subsection 530(b)(3)(A)(i-iii).

90 Percent Requirement

Proposed § 1.25F-3(c)(2) would provide an operational requirement safe harbor if 85 percent of a single-State SGO's activities consist of scholarship granting activities. In that case the SGO may apply the operational requirements to the organization's section 25F segregated account, rather than to the organization as a whole. It is essential that existing SGOs, which have been in operation for state scholarship tax credit programs, do not have to choose between continuing to participate in the state program or participating in the federal opportunity. This will also ensure that existing and new SGOs, whose scholarship activities are at least 85% of their work, can use other tax-exempt income to support the federal opportunity.

Proposed §1.25F–3(c)(3) would provide operational requirements for multistate SGOs. Because section 25F(c)(5)(B) requires an SGO to maintain one or more separate accounts exclusively for qualified contributions, a multistate SGO would be required to maintain a separate section 25F segregated account for each covered State on whose State SGO list the organization appears, and would need to meet the requirements of proposed §1.25F–3(c)(1) separately for its section 25F segregated account for each covered State on whose State SGO list the SGO appears. Consistent with the intent of the statute that the organization be a scholarship granting organization, at least 85 percent of a multistate SGO's activities would be required to be scholarship granting activities.

While we believe the 25F requirement for separate segregated accounts was intended to require that 90 percent of *qualified contributions*, rather than 90 percent of an SGO's total income, must go to scholarships, Treasury opted to create a safe harbor instead.

We believe the definition should include post-secondary scholarships programs, state-based K-12 programs, fundraising, etc. The only area that should not count are the direct and staff costs of running other programs or events that are unrelated to scholarship granting or related support for scholarship families.

We also recommend a lower standard, such as 51 percent, for SGOs to be in the safe harbor. This will allow far more existing SGOs to be in the safe harbor, will increase overall SGO participation, and more students will benefit.

We further recommend that the 90 percent that must go towards scholarships be calculated on a rolling three-year average. First, this would allow for multi-year scholarships, something that is important for many families. Second, it helps with what will be higher startup costs as SGOs put in place their systems for fundraising, designing, and distributing scholarships, and verifying recipient income. Third, because charitable donations are commonly made near the end of the year, scholarships are often not awarded until months later in the spring of the following year and not disbursed until the following school year. For example, a December 2027 gift funding the 2028–29 school year has spring-semester payments falling in January 2029, after the deadline. A rolling average would accommodate this cross-year delay.

Conclusion

Section 25F of Public Law 119-21is transformative tax law that will give millions of K-12 parents the ability to choose the best school or education service for their child. We are grateful to the Treasury Department for promulgating Temporary Rules and a Notice of Proposed Rulemaking (NPRM) that are mindful of congressional intent. REG-117199-25 crafts a largely durable framework for scholarship granting organizations, taxpayers, and K-12 parents and students to benefit from this new law.

With some additional and modest clarifications, we believe final rules will help achieve the ultimate goals of this federal law: ensuring educational opportunity for every child and elevating educational outcomes for every child.

Thank you for considering this comment.

Sincerely,



John Schilling

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