December 22, 2025

ID: Notice 2025-70/ IRS-2025-0466

Internal Revenue Service
CC:PA:01:PR (Notice 2025-70), Room 5503
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Mr. Edward Waters:

On behalf of AASA, The School Superintendents Association, we respectfully submit to the U.S. Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) our comments on Notice 2025-70/ IRS-2025-0466 the "Request for Comments on Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations" (Notice).

AASA appreciates the opportunity to provide comments on behalf of the more than 10,000 local school district leaders represented by our organization. Throughout our 150-year history, AASA has always prided itself in supporting local control and flexibility in federal policy and funding. As we read this Notice, our expectation is that Treasury and IRS will reflect Congressional intent in its regulations and guidance and honor the parameters of *Loper Bright v. Raimondo* to ensure that States have maximum flexibility in designing and creating these tax programs and can, as Senator Rick Scott stated, "opt in to the program and set their own requirements for scholarship-granting organizations."[1]

Throughout these comments, we urge Treasury and IRS to further the Administration's goal of "returning education to the States" and prioritizing state discretion and innovation for the program as well as recognize that, if this flexibility is not granted, fewer states and students will opt into the program. Specifically, we request that Treasury affirm that States have the authority to:

- Chart students' academic progress who receive scholarships
- Aggressively monitor waste, fraud and abuse in SGOs

[1] Scott, R. (2025, July 18). Letter to the Honorable Governors of the United States. U.S. Senate. Retrieved December 12, 2025 from https://www.rickscott.senate.gov/services/files/78544F15-E56F-4A43-8221-57B26C7279A9

- Retain eligibility requirements for existing scholarship programs and collect information about families who use the federal tax credit education program
- Ensure SGOs only partner with schools and vendors that meet basic state and local health, safety, and teacher qualification standards

State Discretion to Set Requirements on SGOs

We urge Treasury and IRS to clarify in guidance and regulations that states are able under state law to set parameters on organizations operating in their state, and that a Governor has discretion over which SGOs they submit to the Secretary as eligible to provide scholarships in their state, so long as they otherwise meet the statutory minimums. § 25F(c)(5) enumerates the minimum federal requirements for an organization to qualify as an SGO. § 25F(g) designates the Governor of the State (or such other individual, agency, or entity as is designated under State law to make such elections on behalf of the State with respect to Federal tax benefits) as responsible for the decision to participate in the program and the list of SGOs submitted to the Secretary. The Notice currently states that the Treasury Department and the IRS "anticipate" requiring that "the State list must include all organizations located in the State that have requested to be designated as an SGO and that meet the § 25F(c)(5) statutory requirements." However, in enacting OBBBA, Congress did not include such a requirement. Rather, Congress expressly empowered each State to determine whether or not to participate and to provide the list of eligible SGOs, without any clear restriction on State discretion regarding that list, beyond ensuring each organization *at minimum* satisfies OBBBA's requirements.

In fact, among the requirements that an organization must meet to qualify as an SGO, Congress included via § 25F(c)(5)(D) a *requirement* that the organization "is included on the list submitted for the applicable covered State under subsection (g) for the applicable year." Under § 25F(g), participating States "shall provide…a list of the [SGOs] that meet the requirements described in subsection (c)(5)." This cross-reference in § 25F(g) to the SGO definition in § 25F(c)(5) refers to *all* of § 25F(c)(5), including § 25F(c)(5)(D) and not just § 25F(c)(A)–(C). Accordingly, § 25F(c)(5)(D) is best understood as one of the statutory requirements in § 25F(c)(5) that an organization must satisfy to be included in the list called for in § 25F(g). Being "included on the list" that the State prepares thus sits alongside other statutory requirements such as "is not a private foundation" (§ 25F(c)(5)(A)(ii)) and "provides scholarships to 10 or more students who do not all attend the same school" (§ 25F(c)(5)(d)(1)(A)). Interpreting § 25F as providing no discretion to States would violate well-established canons of statutory interpretation by rendering § 25F(c)(5)(D) meaningless and duplicative of the mandate in § 25F(g). Further, § 25F(g), which recognizes States' discretion to participate in the program also requires the State to provide "*a*" list, not "*the*" list, which reinforces the interpretation that States can choose to play a substantive role regarding the SGO list. If Congress had intended for States to have no discretion, then either § 25F(c)(5) would have no subpart (D) or § 25F(g) would cross-reference only § 25F(c)(A)–(C).

In other words, the requirements in § 25F provide a floor that SGOs must minimally meet, not a ceiling that eliminates any role for States in deciding whether to include organizations located in their state on their annual lists of SGOs eligible to accept qualifying contributions. Yet, in the Notice, Treasury and IRS seem poised to allow every SGO that meets the very minimal criteria set forth in the statute to be included on the list of SGOs that states submit to the Department annually. This means that a Governor or state legislature would have no opportunity to determine SGO eligibility beyond those statutory criteria. States could not decide how many SGOs to approve or select SGOs to ensure that all students and all regions of the state will be served. States could not pre-screen SGOs for a history of poor fiscal and academic performance. Nor could states approve only those SGOs that will distribute vouchers in line with the state's educational priorities and needs.

There are numerous reasons a Governor or State may need discretion in determining which SGOs are included on the list to submit to the Secretary. However, we believe the following reasons are essential flexibilities that must be in place to maximize state participation and ensure taxpayer dollars are wisely and appropriately allocated.

States must have the authority to assess the academic progress of students who participate in the federal tax credit program. Although not all states may prioritize this, some will be more likely to participate in the program if they are able to track and share information with families and communities about which schools, vendors, and SGO partners are effective at improving student achievement. For example, a state may want flexibility to require SGOs receiving charitable contributions to demonstrate they represent a strong return on investment for taxpayers by charting their progress in improving students' academic success or postsecondary readiness. States should be allowed to determine how students are performing as a result of their participation in these programs. These data will ensure states can also empower parents to make informed decisions about their children's participation in the program and select the most beneficial SGO for their child. It will also allow states to encourage donation and investment in SGOs that are excelling in improving student achievement.

States that have tax credit programs already have a variety of ways to track student outcomes, and Treasury must ensure states have the freedom to continue these practices. For example, many states with existing programs, including Alabama, Florida, Iowa, and Ohio, require an assessment of students and the reporting of results. North Carolina also requires reporting graduation rates. Allowing states to be able to require SGOs to track this data is particularly important for parents who would find it difficult, if not impossible, to get the full picture regarding their own children's academic achievement without these data.

States must have the ability to aggressively monitor for and protect against waste, fraud and abuse in the federal tax credit program. Although most states provide oversight or require the SGOs to have oversight of how scholarships are utilized by parents, there are countless examples of waste, fraud, and abuse in existing state tax credit and voucher

programs. States should build on proven oversight strategies and strengthen areas where current mechanisms are lacking, in order to better identify and prevent waste, fraud, and abuse in the federal program. This will help ensure federal taxpayer funds are used efficiently.

For example, Florida has more than 25 years of experience with several school choice programs and continues to identify measures to minimize waste, fraud, and abuse. Legislation to implement these changes and place new accounting measures on SGOs advanced this year. One section of the proposed law streamlines payment schedules for SGOs to ensure consistency and reliability of scholarship funds for families. It also updates reimbursement protocols to ensure timely invoicing and payment of participating vendors and schools. The legislation also increases reporting and auditing to improve accountability to taxpayers by requiring the Auditor General to periodically conduct an end-of-year audit of the scholarship program and requiring that SGOs return funds as a result of the audit findings. The rationale for these new legislative measures is that the current SGO in Florida has not been able to account for where 30,000 students were going to school or roughly the $270 million in taxpayer funds it took to support them.

Further, some states require greater transparency around fiscal health of the SGO and schools partnering with SGOs. For example, schools in Florida's tax credit program must demonstrate fiscal soundness and accountability by being in operation for at least three school years or obtaining a surety bond or letter of credit with the Department of Education and by requiring the parent of each scholarship student to personally endorse the scholarship warrant to the school.

States should be able to retain eligibility requirements for existing programs and collect information about families who use the federal tax credit education program. Based on their unique educational landscapes, student populations, and policy priorities, many existing state tax credit programs have been designed specifically to serve particular students and families. For example, some state programs are targeted to serve students with disabilities, low-income students, or students in low-achieving school districts. States need to be able to maintain the targeted criteria they have for their state programs when implementing the federal program. To achieve broader educational policy goals, states must have the flexibility to allow SGOs to combine state and federal tax credit funding to better serve critical populations of children.

In addition, states must be allowed to require SGOs participating in the federal program to collect information about which children and families in their state are benefiting from the program. This will allow states to market the program more effectively to ensure families from all regions of the state (for example, the rural-urban breakdown) and all populations (for example, the breakdown between economically disadvantaged and wealthier families; families in public schools, private schools, and homeschools; and grade levels of participating students) have the same awareness about and opportunity to use the program. This kind of reporting should be for each year the SGO requests inclusion on the state's list of certified SGOs.

Moreover, this kind of reporting happens in existing state programs. For example, Arkansas, Georgia, Indiana, and North Carolina all require reporting about the demographics of who uses their existing education programs. Indiana also collects data on the number and percentage of vouchers for children with no previous record of public school attendance. Other states like Arkansas' annually collect the total student enrollment of each participating school, and the percentage of the total enrollment of each school represented by participating students.

States must be able to require that SGOs work only with vendors and schools that can demonstrate compliance with basic state and local health, safety, and teacher qualification standards. States should have the authority to require that educational entities serving children comply with basic health and safety safeguards. Likewise, states should be free to ensure that families have access to quality vendors and schools as this will empower parents to choose the educational environment that best suits their child's needs and abilities.

For example, in Florida and Arizona, school personnel in private schools that accept scholarships who will be in contact with students have to undergo rigorous screening, including background checks or fingerprinting. And in the DC choice program, the SGO was required to work with the city to conduct inspections of all participating schools to determine whether they have a current certificate of occupancy as well as do biennial inspections to determine whether the schools comply with applicable health and safety ordinances. These kinds of requirements are vital to ensuring student safety and it is critical that states have the autonomy to ensure the safety of their students as they see fit.

Furthermore, under federal education laws a right-to-know provision requires public schools to give parents basic information about their child's teachers' professional qualifications, including whether they are fully licensed and certified to teach the grades and/or subjects they are instructing. And many existing state tax credit programs "require schools to ensure teachers meet certain qualifications, such as holding a state-issued certificate or a college degree." In Alabama, for example, the State requires all private school teachers to hold teaching certificates issued by the state. Florida requires that schools participating in one program employ or contract with teachers who hold a baccalaureate or higher degree, have at least three years of teaching experience in private or public schools, or have special skills, knowledge or expertise that qualifies them to provide instruction in subjects taught. In contrast, Indiana requires that schools participating in their scholarship program must be accredited by either the state board or a national or regional accreditation agency that is recognized by the state board rather than require certification and licensure. States must be able to continue to determine the scholarship program requirements for private school teacher qualifications in the context of the federal tax credit scholarship program. This kind of data is essential to ensuring parents can access quality vendors and schools and at a minimum have basic information about whether the educators supporting their children's success meet state license and certification standards.

Technical Clarifications

In addition to the need to ensure the Congressionally intended control of these programs is fully realized for states, we also have several technical issues we want to address in the Notice.

First, Treasury and IRS should affirm that the definition of qualified elementary and secondary expenses which are "supplementary items and services (including extended day programs)" as referenced in Coverdell § 530(b)(3)(A), may be broadly interpreted to accommodate local variations in how schools and programs operate. A restrictive interpretation of "supplementary items and services (including extended day programs)" as a qualified elementary and secondary expense would deny opportunities for students, particularly students in public schools, to benefit from the scholarship program

The terms "required" and "provided" are not defined in statute and should be interpreted broadly to reflect how educational services are delivered in practice. States should be permitted to recognize expenses associated with services delivered through partnerships, targeted interventions, and locally required programs.

Treasury should confirm that this category may include after-school programs, summer learning, workforce apprenticeships, and field trips with associated costs, so long as such expenses are otherwise eligible under state definitions.

Second, Treasury and IRS appear to be open to allowing SGOs based outside a State that is opting-in *to* be eligible for the list submitted to the Department. Specifically, the notice references "regional" and "multi-state" SGOs that could disburse vouchers in any state where they are "authorized to operate."

Congress was clear: "*a State that voluntarily elects to participate [in the program] shall 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." "Located in the State" straightforwardly means *headquartered* in the state, not simply authorized or registered to accept donations. Indeed, a review of the nearly 100 provisions in the U.S. Code that include the phrase "located in the State," demonstrates that no other provision could be interpreted as "authorized to operate," as suggested here by Treasury and IRS. State authorities must have the power to determine which SGOs are operating in their state and to require that such SGOs have a direct connection to the state, its taxpayers, and students. An SGO is not only providing scholarships to in-state residents, but is also collecting contributions from in-state residents. As a result, the state has an inherent interest and right to regulate these charities including requiring it be headquartered in the state.

Third, Treasury and IRS must recognize that Congress specifically required that each SGO authorized to manage the federal program provide vouchers to 10 or more students who do not all attend the same school. Multi-state SGOs cannot meet these requirements in the *aggregate*, across all the states in which they operate. In other words, an SGO cannot offer a voucher to only one or two students, or fund vouchers only for a single private school in one state if the student is not enrolled in the school located in the State nor if the State has not

chosen to opt-into the program. Ignoring these base-line federal requirements would set up inconsistencies in applying basic requirements of the law across states for this federal program. It would also put large existing SGOs at a nearly insurmountable advantage over smaller, more limited organizations in terms of soliciting and managing donations and directing the distribution of vouchers.

Fourth, if a State with an existing state tax credit scholarship program similar to the federal tax credit program chooses to opt in, their existing SGOs that wish to collect federal tax donations must meet the basic requirements of SGO set forth in OBBBA.

Fifth, for existing nonprofits that are run by public schools or in partnership with public schools to be able to participate in the program, it is critical that the 90% of income requirement is constrained to the federal tax credit scholarship funds. This clarification will enable the quick creation of SGOs positioned by public school entities with strong fiscal practices as well as expertise in an area covered by the scholarships and not add additional bureaucracy.

Sixth, Treasury and the IRS should clarify that scholarships may support mental health and behavioral health services for eligible students, including counseling and trauma-informed supports, when such services complement but do not supplant district-funded programs.

Seventh, we believe Treasury should define an "eligible student" under Section 25F to include a student enrolled in a public school who seeks supplemental educational services. Forthcoming regulations should expressly recognize that scholarships may support:

- Tutoring and academic intervention;
- After-school and extended learning programs;
- Specialized instructional services addressing learning loss or unmet needs; and
- Student transportation services.

This clarification aligns with the statute's income-based eligibility criteria and ensures the tax credit benefits students based on need rather than school sector.

We appreciate the opportunity to provide these comments to you and look forward to seeing guidance and regulation that reflects the Congressionally-intended autonomy and discretion of States.

Sincerely,

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