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Submitted via Regulations.gov

Edward Waters
Office of the Associate Chief Counsel (Income Tax & Accounting)
Internal Revenue Service
U.S Department of the Treasury
1111 Constitution Ave, NW
Washington, DC 20224

RE: Notice 2025-70—Request for Comments on Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations

Dear Mr. Waters:

On behalf of the three million members of the National Education Association (NEA), the nation’s largest professional organization representing educators and education support professionals, we submit the following response to the U.S. Department of the Treasury’s (Department) and the Internal Revenue Service’s (IRS) request for comments in advance of forthcoming proposed regulations to implement new § 25F of the Internal Revenue Code (Code), as added by § 70411 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), and as published in the Federal Register on December 1, 2025. As discussed below, the enacted federal tax credit functions as a nationwide private school voucher program that diverts public resources away from public education, undermines democratic decision-making at the state level, and lacks the accountability necessary to safeguard taxpayer dollars. **In light of the statute’s text, structure, and the overwhelming evidence regarding the harms of voucher programs, Treasury’s guidance and regulations must be narrowly tailored, neutral, and firmly grounded in respect for state authority, transparency, and equity.**

As stated in the request for comments, “Section 25F provides a new credit for an individual’s qualified contribution to a scholarship granting organization (as defined in § 25F(c)(5)) (SGO) that provides qualified elementary and secondary scholarships. In anticipation of issuing the forthcoming proposed regulations,” the Treasury Department and IRS “requests comments regarding issues arising under § 25F that should be addressed in guidance, emphasizing issues on which guidance is

most quickly needed, including issues relating to the annual certification by a State and SGO requirements.”

The Overwhelming Evidence Against Private School Vouchers as Education Policy

The federal tax credit as enacted is a voucher program. Vouchers redirect public tax dollars from the common good to private purposes, and Americans time and time again have rejected vouchers. References to “scholarships” in section 25F may be appropriate if they pertain to public tax dollars awarded to students for qualified education expenses at public schools. Those same public tax dollars used by students for education expenses at private schools are vouchers and should be referred to as such.

A tax credit is a form of spending conducted through the tax code. This federal tax credit siphons off revenue that would otherwise support federal programs, such as defense, veterans care, health care, and public education, for example. The sad fact is federal appropriations for public education — particularly for Title I and IDEA — have never been adequate. That Congress passed and the President signed a law to intentionally drive millions of taxpayer dollars away from public education and other critical supports for American families is shameful. At a time when millions of families are facing 200% increases in health insurance costs, rising rents and utilities, and unacceptably high grocery bills, lawmakers should be focused on passing policies that help make life easier, not erode financial support for basic building blocks of safety, health, educational opportunity, and economic security.

The enacted federal tax credit disproportionately benefits students attending private schools because it was designed to funnel public money to pay the cost of tuition and other fees charged by private schools. Public schools, in general, do not charge tuition and any associated fees or expenses are relatively modest, which makes the federal tax credit a highly inefficient source of support for students attending public schools. It is clear this was an intentional design feature.

Unlike spending reviewed and approved by Congress annually through the appropriations process, a tax credit, once enacted, receives much less scrutiny and on a less frequent basis. The lack of Congressional oversight, when coupled with DOGE’s recent gutting of public employees in federal agencies whose jobs were to prevent waste, fraud, and abuse of taxpayer dollars, means that this voucher plan will have little to no accountability or public review.

The enacted federal tax credit is burdened with the same empty promises as other voucher laws: it perpetuates the mirage that students and families are afforded a “choice” when, in fact, the real choice lies in the hands of the private schools that determine whom they enroll and for how long. The mirage is powered by a market-based ideology that has captured the minds of voucher adherents despite the proven failure of vouchers and the overwhelming evidence of dismal outcomes for students in voucher schools.

Scholars that reflect the gold standard in education research have amassed analysis and findings that refute the claims of voucher proponents. “The evidence undermining the...claim—that choice improves student outcomes—is overwhelming; indeed, voucher research has documented some of the worst policy-induced achievement declines in the history of education research.” Any modest “competitive impacts [afforded by school choice] are dwarfed by evidence suggesting that simply investing directly in public schools creates larger and more widespread benefits.”¹ Jeff Yass, a leading billionaire backer of vouchers and self-described devotee of free-market solutions was quoted as follows in a recent interview: “I don’t care what the studies say” and placed voucher schemes — coded as “choice”— as the end goal and above student outcomes.²

Notably, this blind adherence to a voucher agenda fails to respect the choice of voters who have overwhelmingly rejected voucher schemes—democratically and directly—through many, many ballot initiatives over the last two decades. Regardless of the state, every time vouchers have appeared on a ballot measure, voters have rejected them by wide margins—most recently in 2024 in Colorado, Kentucky, and Nebraska.³ In Kentucky, voters across all 120 counties⁴ rejected a state constitutional amendment to enable vouchers and did so by the same wide margin that the voters in the state supported Donald Trump. The enacted federal tax credit should not be a vehicle to circumvent and subvert the will of the people who have made their choice through the ballot box.

Particularly given the constitutional authority of states and their localities over education policy—and widespread public opposition to voucher programs as demonstrated in polls and the rejection of statewide voucher initiatives—the tax credit should be implemented with great restraint. Treasury guidance and regulations should remain neutral and faithful to the plain meaning of the provisions of section 25F in order to avoid favoring the accumulation of donations for SGOs serving students attending private schools. Treasury guidance and regulations should create a level playing field to ensure that students attending public schools have equal access to scholarships to be used for evidence-based interventions that support their academic growth. A neutral regulatory framework best meets the intent of the statute and creates the conditions for state participation that is anchored in equity and compatible with a state’s education priorities and policy goals.

REQUEST FOR COMMENTS ON STATE LISTS AND CERTIFICATIONS

In considering its rulemaking and guidance, the Department should bear in mind that Section 25F was passed in a budget bill: it is tax, not education policy and must not be interpreted in ways that undermine states’ rights and powers to make laws and promulgate regulations that provide education for the people of their states. The statute includes several key provisions that prevent this tax credit from undermining rights and powers that belong to the states. First, it creates a voluntary program, inherently recognizing the preeminent state role in the education sphere. Second, it vests in states the power to condition participation in the tax credit program by certifying only those SGOs that meet the requirements of state constitutions, laws, and policies. Finally, by requiring that SGOs be located in the states that opt into the program, it preserves the states’ important power to regulate non-profit

organizations operating in their states. Below, we consider the implications of each of these Congressional choices for the Department's rules and guidance on the tax credit program.

First and foremost, the statute allows each state to decide whether to opt into the program. This is a voluntary program: As such, it should not be read to coerce state choices regarding education but instead recognize each state's right to set the terms of its participation consistent with state constitutions, laws, and policy priorities.

Accordingly, the statute also empowers each state to determine which SGOs are certified to participate in that state. It uses a belt-and-suspenders approach to doubly ensure state control over how federal tax credit money influences education policy in their state. At Section 25F(g) the statute provides that "a State that voluntarily elects to participate . . . 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." §25F(g)(1)(A). In turn, the definition of "scholarship granting organization" in subsection (c)(5) includes, as one of its four prongs, the requirement that a qualified SGO must be "included on the list submitted for the applicable covered State under subsection (g)." §25F(c)(5)(D). Department guidance and regulations must reflect the state responsibility to certify SGOs, and in so doing, to determine which SGOs are qualified to award scholarships in each state.

The state-controlled certification process ensures that participation in the tax credit program does not undermine or conflict with state education laws and policies. Those state priorities are as diverse as the states themselves. They might include a requirement that an SGO be governed by an in-state board; meet audit and accountability requirements; serve only public school students, given state constitutional and legal mandates prohibiting aid to private entities; serve a statewide population of students; prioritize awards for low-income students; limit administrative expenses; ensure scholarships are provided for students at rural, tribal, and other underserved schools; and comply with state laws against discrimination.

The statute further acknowledges the role of state regulation by requiring that all participating SGOs be "located in the state" that opts into the federal tax credit program. §25F(g)(1)(A). States have extensive power to regulate organizations that operate within their borders. States have a special responsibility to incorporate 501(c)(3) organizations and ensure that they meet their tax-privileged status as non-profit, charitable entities. Any attempt in Department regulations to undermine that state power would have consequences far beyond this statute and risk destabilizing our system for regulating the non-profit sector.

State Policies and Procedures

The statute recognizes state authority to regulate and ensure accountability and transparency through policies, procedures, and recordkeeping. Treasury should require every state to maintain all records necessary to determine that an SGO is a qualified tax-exempt entity. State responsibilities include determining whether the SGO is granting scholarships consistent with the requirements of § 25F, including, but not limited to, income verification of the grant recipient and compliance with all disqualified persons rules. This will include collecting and recording all necessary individual tax return information from recipient families as well as the data and calculation used to determine the proper median gross income as required under § 25F(c)(2)(A). It is reasonable to require

participating SGOs to provide this information to every state in which they operate as well as the IRS as it is necessary for documenting whether an SGO is qualified, and scholarships granted are compliant.

A 2019 GAO report reviewed state requirements for financial accountability, academic standards, and other topics pertaining to tax credit voucher programs in 22 states.⁵ The report found that states had varying approaches for implementing their respective tax credit voucher program. For example, every program limited the percentage of donations that could be used to administer the program, with limits ranging from 2% to 20%. Notably, all the programs at the time required SGOs to register with or be approved by the state.

Treasury should acknowledge and respect state policy choices and criteria for regulating SGOs. Department regulations and guidance should also respect the core requirements that many states apply to private schools that accept taxpayer dollars. Private schools participating in many state programs are required to follow specific academic guidelines related to curriculum content, instructional time, staff clearance, testing, and more. This tax credit should not be a back-door attempt to achieve federal education policy without appropriate legislation and appropriations.

Many states with existing voucher programs have implemented laws, regulations, and protocols to ensure SGOs meet State requirements. For example, Georgia set clear reporting requirements for their state equivalent of an SGO referred to as a “student scholarship organization (SSO)” (O.C.G.A. §§ 20-2A-1-7). With respect to the first \$1.5 million raised, Georgia SSOs are obligated to spend at least 92% of their revenue on “scholarship” distributions. The obligated spending percentage is increased as revenue amounts are raised beyond the \$1.5 million threshold. Further, an annual audit of an SSO’s accounts must be completed by an independent certified public accountant within 120 days after the completion of the SSO’s fiscal year. The auditing standards require verification that the SSO meets the state established scholarship fund management requirements, operational fund management requirements, student eligibility requirements, and school qualification requirements, among others. The SSO is required to provide a copy of that audit to the Georgia Department of Revenue. Moreover, the state auditor is required to issue an economic analysis report on the performance of this tax credit to the chairpersons of relevant committees in the Georgia Legislature. To prevent fraud, waste, and abuse, the analysis must include certain data points, such as the net change in state revenue, costs of administering the tax credit, and net change in public benefit.

Similarly, New Hampshire’s “Education Tax Credit Program” subjects Scholarship Organizations (SOs) to reporting requirements on the total number and dollar amount of scholarships awarded; the percentage of students eligible for free and reduced-price lunch; total cost spent on administrative expenses; an analysis of awards by zip code; the place of residence for each student that receives a voucher; and aggregated results of parental satisfaction survey, among others (N.H. Rev. Stat. §§ 77-G:1-10). The New Hampshire law also requires SOs to comply with state and federal antidiscrimination and privacy laws.

Because voucher programs operate without the standards and transparency we enjoy in public education, states can and must impose accountability on the SGOs, schools, and vendors that receive public money through those programs. A myriad of reports has documented waste, fraud, and abuse in voucher programs across multiple states, including this recent story resulting from a program audit in Florida: “On any given day, Florida’s education department did not know where 30,000 students were going to school and could not account for the \$270 million in taxpayer funds it took to support them, according to the state Senate Appropriations Committee on Pre-K-12 Education.”⁶

In Arizona, shortly after taking office in 2023, Attorney General Mayes filed criminal charges against three Department of Education employees who created “ghost” students to defraud the state of voucher funding—even ensuring that their ghosts had disabilities prompting the highest level of payout.⁷ In 2024, the AG launched an investigation of the Arizona Department of Education for misuse of public monies, citing funds paid out on outrageous expenditures like ski passes, diamond rings, lingerie, and home appliances.⁸ States must be free to drive accountability measures as appropriate to protect the people of their state from the fraudulent, abusive practices that are rampant across voucher programs nationwide.⁹

Section 25F outlines few requirements for participating SGOs – but the statute is clear that the state has authority to certify only those SGOs that meet state law and policy priorities. The guidance and forthcoming regulations should make clear that the federal law sets a floor, not a ceiling, on state requirements for SGO certification, and that existing state laws and regulations on SGOs, participating schools, and vendors, are not in any way undermined by this federal tax credit program.

“Located in the State”

The statutory language requiring SGOs to be “located in the state” subjects multistate SGOs to the laws and policies of every state where they operate. State laws and policies should determine when an SGO is “located in the state.” Multistate organizations, if allowed by state laws and policies, should be required to meet the requirements of the relevant laws, regulations, and processes in each state in which they operate.

To be considered “located in” a state, an SGO must be required to have a physical presence in the state and be compliant with all state laws governing registration and monitoring of state charities. For example, South Dakota’s Partners in Education Tax Credit Program sets out qualifications for participating SGOs, including the requirement that each SGO be governed by a board of at least five members, each of whom must be a South Dakota resident. S.D. Codified Laws § 13-65-4 (Requirements for scholarship granting organizations). Many states may conclude that SGO board members should be residents of the state and familiar with the communities where the SGO will be operating among its requirements for certification.

An SGO is not only providing scholarships to in-state residents, but by its very nature is also soliciting contributions from in-state residents. As a result, the state has an inherent interest and right to regulate these charities including requiring a physical presence, among other requirements.

State Tax Credit Offset

States should provide taxpayers with confirmation that a donation to a state SGO for a tax credit has been made, the year in which it was made, and the amount of the state credit. This information should also be provided to the IRS for administration purposes.

REQUEST FOR COMMENTS REGARDING SGO REQUIREMENTS

Income

Charitable organizations are required to report to the IRS unrelated business income (UBI) and in most cases pay federal income taxes on this amount. The amount and type of UBI is also relevant for the state and IRS to determine if the entity is being operated as a qualified charity. For these reasons, it is reasonable that all the income of the entity be reported and included in the calculation of income of the SGO.

The statute does not provide exceptions to the rules governing that an SGO must spend at least 90% of the income on scholarships to eligible students. In contrast, § 25F(g)((1)(1)(A) provides specific flexibility to states in providing the Secretary with a list of qualified SGOs in the first year the statute is in operation making clear the drafters were aware of timing issues that might occur. If the drafters had wanted to include the ability of SGOs to smooth income over a number of years this would have to be described in detail or at least reference other provisions in the Code where income smoothing is allowed.

Multistate Organizations

The statute—in spirit and in plain language—requires compliance on a state-by-state basis. Section 25F, as drafted, is clear that state participation in the tax credit program is voluntary, and the decision to opt in is controlled by state law. A single answer suffices in response to the multiple questions related to multistate organizations: No exceptions or separate rules to any of the state control requirements should be made for multistate entities. The statute is clearly drafted to recognize the right of each state to certify participating SGOs; set terms of certification consistent with state education laws and policies; and enforce its laws regarding SGOs and all non-profits; and to protect its citizens more generally.

All donors should be required to designate a particular state in order to be eligible for the tax credit under § 25F. Without such designation, there would be no means for a state or IRS to determine if the donation is qualified.

Definition of a Disqualified Person

In order to prevent abuse, guidance should be clear that an SGO cannot award scholarships to any donor's family members. Under current law, taxpayers have the option to gift family members cash, securities, or other types of property to assist them with the costs of a private school education. Allowing taxpayers an additional tax credit to pay for school costs is inconsistent with the wording of the statute and the intent of its proponents.

Reporting and Recordkeeping Requirements

In order to maintain the integrity of our tax system, SGOs should be required to provide the IRS with all information necessary to ensure that taxpayers are entitled to a federal tax credit. That information must be sufficient to show that the SGO is qualified and in compliance with applicable state laws; that scholarships are qualified and only going to students as allowed by the statute; and that the taxpayer is entitled to the tax credit. Because the § 25F tax credit is a dollar-for-dollar federal income tax credit, it is highly susceptible to fraudulent claims. To minimize and discourage abuses, the states and IRS should be provided with all necessary information to prove that an SGO is qualified, and the taxpayer is entitled to the credit, specifically:

- SGOs should be required to provide the state with all needed information to allow the state to determine that the SGO is qualified and providing scholarships to qualified students. This reporting should be made for each year the SGO requests inclusion on the state's list of certified SGOs. The SGO should also be required to meet all state requirements for charities, including those specific to entities providing scholarships or analogous payments under state programs.
- SGOs should be required to document and report on the income eligibility of scholarship recipients. If any member of the household of the eligible student did not file a Federal return, SGOs should require W-2s or other documents that can verify income.
- In order to be eligible for the credit under § 25F, taxpayers should be required to notify the SGO that the donation is intended to be segregated for qualified scholarships in the state as required under the statute. The donor should be required to provide this information to the SGO in order to take the § 25F credit. The SGO should be required to provide the donor with written substantiation in order for the donor to take the § 25F credit.
- The SGO should provide the donor with sufficient information to allow the taxpayer to know that the donation is used or set aside for scholarships that would make the taxpayer eligible for the federal credit. The SGO should be required to inform the donor of the following:
 - that only the first \$1,700 of qualified contributions may entitle the donor to a § 25F credit;
 - that additional amounts over the first \$1,700 may qualify for a Federal tax deduction under § 170 (but that any qualified contribution for which a § 25F credit is allowed may not be taken into account as a charitable contribution for purposes of § 170); and
 - that any § 25F credit must be reduced by any credit on any State tax return of the taxpayer for qualified contributions made by the taxpayer during the taxable year. The IRS should also include the necessary calculation, schedule and/or form and create an automated process to identify when a taxpayer claims a credit in excess of what is allowed under the statute including not reducing the federal credit by the state credit.

- The statute does not provide exceptions for multistate organizations; therefore, these entities must comply with the requirements in each state in which they intend to provide scholarships, pursuant to the laws and policies set out in each state.
- If an SGO is determined to be non-qualified and/or engaging in non-qualifying activities, all tax credits allowed for contributions to that SGO for the tax year of disqualification should be denied and/or recaptured. The question of whether a taxpayer had knowledge or was responsible for the activities or deficiencies is relevant only as to whether a penalty should also apply.

Regulations and Guidance Cannot Compensate for the Ills of Vouchers as Education Policy

“Ideology and not evidence primarily drives the case for vouchers. And, that point is strengthened still further by additional scholarship on who chooses vouchers, who stays in a voucher-accepting schools over time, and who is at risk for discriminatory impacts recent legislation allows.”¹⁰

Overwhelming evidence shows that vouchers subsidize families already enrolling their children in selective private schools.¹¹ Further, vouchers perpetuate racial and economic segregation;¹² underwrite discrimination against students that would not be lawful in public schools; and deny students with disabilities the free, appropriate education they deserve – usually without even warning families about the legal and civil rights they forfeit when accepting a voucher.¹³

For all these reasons, when considering its rulemaking and guidance, the Department should bear in mind that Section 25F must not be interpreted in ways that undermine states’ rights and powers to make laws and promulgate regulations that provide education for the people of their states; that the statute recognizes state authority to regulate and ensure accountability and transparency through policies, procedures, and recordkeeping; and that it should adopt a neutral regulatory framework to best meet the intent of the statute and create the conditions for state participation that are anchored in equity and compatible with a state’s education priorities and policy goals.

The NEA respectfully submits these comments for consideration. Please do not hesitate to contact me or Daaiyah Bilal-Threats, Senior Director, at DBilal@nea.org should you have any questions or need further clarification.

Sincerely,



Rebecca Pringle
President
National Education Association

cc: Kim Anderson, Executive Director, NEA

¹ Cowen, J. & Nowak, R.D. (2024). How can states make school voucher systems more accountable, accessible, and transparent? Boulder, CO: National Education Policy Center. Retrieved December 18, 2025 from <http://nepc.colorado.edu/publication/voucher-accountability>

² Meckler, Laura, et al. “Meet the billionaire pushing taxpayer-funded school vouchers. How Jeff Yass, one of the richest people on the planet, uses politics to press his pet issue: school choice.” *The Washington Post*, December 5, 2025, [Billionaire Jeff Yass is on a quest to remake American education - The Washington Post](#).

³ Hager, Eli & Schwartz, Jeremy. “Despite Trump’s Win, School Vouchers Were Again Rejected by Majorities of Voters.” *ProPublica*, Retrieved December 18, 2025 from <https://www.propublica.org/article/school-vouchers-2024-election-trump>

⁴ Bailey, Jason. “Kentucky Voters Buried Private School Vouchers. One More Idea Must Die to Truly Reinvest in Our Public Schools.” Kentucky Center for Economic Policy. Retrieved December 18, 2025 from <https://kypolicy.org/kentucky-voters-buried-private-school-vouchers-one-more-idea-must-die-to-truly-reinvest-in-our-public-schools/>

⁵ U.S. Government Accountability Office. (2019). Private school choice: Accountability in state tax credit scholarship programs. (GAO Publication No. 19-664). <https://www.gao.gov/products/gao-19-664>

⁶ Lumpkin, Lauren, et al. “How Florida lost track of 30,000 students, a ‘cautionary tale’ for vouchers.” *The Washington Post*, December 8, 2025, [How Florida lost track of 30,000 students, a ‘cautionary tale’ for vouchers - The Washington Post](#)

⁷ Arizona Attorney General Kris Mayes (2024). Attorney General Mayes Announces Indictments in the ESA Program. Retrieved on December 18, 2025 from: <https://www.azag.gov/press-release/attorney-general-mayes-announces-indictments-esa-program>

⁸ Harris, C. “I-TEAM: ESA parents bought diamond rings, lingerie, and Kenmore appliances with education tax dollars.” *12News*, August 18, 2025, [Diamond rings, luxury clothing, and Kenmore appliances among ESA purchases | 12news.com](#)

⁹ See, e.g. State Affairs (2024). Mayes investigating voucher purchases as ESA program grows. Retrieved from: <https://pro.stateaffairs.com/az/yellow-sheet/news/mayes-investigating-voucher-purchases-as-esa-program-grows>

¹⁰ *Id.* (refers to Cowen, J. & Nowak, R.D.)

¹¹ *Id.* (refers to Cowen, J. & Nowak, R.D.)

¹² Chris Ford et al., *The Racist Origins of Private School Vouchers*, Center for American Progress 8 (2017), <https://www.americanprogress.org/article/racist-origins-private-school-vouchers>

¹³ U.S. Government Accountability Office. (2017). Private school choice: Federal actions needed to ensure parents are notified about changes in rights for students with disabilities. (GAO Publication No. 18-94). <https://www.gao.gov/assets/d1894.pdf>