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December 23, 2025

Internal Revenue Service
CC: PA: O1:PR (Notice 2025-70)
Room 5503
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

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

Mr. Edward Waters:

The NSBA respectfully submits 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).

The National School Boards Association ("NSBA") was founded in 1940 for the purpose of ensuring that each student everywhere has access to excellent and equitable public education, governed by high-performing school board leaders and supported by the community. With members spread across the United States, the Virgin Islands, and Canada, NSBA is the only national organization representing school boards and is widely acknowledged as the leading advocate for its member associations, member public schools, and their school board members.

NSBA has long opposed private school choice programs that divert public resources toward private schools that are not held to the same standards as public schools. These programs strain public education by taking away dollars that are used to serve the vast majority of children, and they undermine our collective responsibility to provide a high-quality education to all students.

The proposed individual tax credit for contributions to Scholarship Granting Organizations (SGOs) raises significant concerns regarding the diversion of public funds away from public education. Tax credits function as public resources, and their redirection to private scholarship programs risk undermining funding, equity, and accountability in public schools, where the vast majority of students are educated. Through these comments we urge the Treasury Department and the IRS to carefully consider the fiscal and educational impacts of this policy and to prioritize state discretion and safeguards that protect public education, uphold

Transforming public education, board by board

transparency, and ensure that federal tax policy does not weaken state and local investments in public schools or student protections.

While we continue to champion public education and are generally opposed to tax credit programs, we sincerely thank Congress for ensuring public schools are eligible to participate in the new federal tax credit program and we appreciate the opportunity to provide feedback on the Treasury Department and IRS's intent to issue guidance and proposed regulations to implement § 25F of the Internal Revenue Code (Code),¹ as added by §70411 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One Big Beautiful Bill Act (OBBA).

The new individual tax credit for qualified contributions to Scholarship Granting Organizations (SGOs) has the opportunity to support educational achievement for all students, particularly public school students, and through these comments we urge the Treasury Department and the IRS to maximize impact for students by spurring state leadership and innovation. **Prioritizing state discretion and innovation will strengthen the impact of the scholarships and ensure the program benefits America's public school students and ensures protections for all students.**

We are providing comments on state discretion to set requirements on SGOs, state discretion to define "school," state discretion to interpret allowable expenditures broadly, and the operations of scholarship granting organizations. Our comments provide recommendations consistent with the statute and are designed to address key situations.

State Discretion to Set Requirements on SGOs

I. Clarify Governors have discretion to set state-specific requirements for SGOs before including them on the lists that they submit to the Treasury Secretary.

Under Section 3.02 of the Notice, the Treasury Department and IRS should affirm that states are inherently able 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, as 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 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 nor any elimination of states' discretion.

Education is fundamentally the purview of states and governors have ultimate responsibility for the welfare of students in their states, leadership of the design of education in their state, and the opportunity to be laboratories of democracy. Additionally, states, through authorities authorized under state law, such as state legislative and regulatory action, retain the authority to regulate SGOs as entities operating in their state. As such, a governor may limit the list of SGOs to only those that meet state requirements. Therefore, the state must have the ability to set requirements for approving organizations that operate in their state, as well as discretion in which SGOs they elect to submit to the Secretary.

There are numerous reasons a governor may choose which SGOs they elect to include on the list to submit to the Secretary. For example:

- A governor may limit the list of SGOs to only those that meet provisions that are necessary to prevent fraud, waste, and abuse (including data reporting), and/or exclude SGOs that are found to have engaged in fraud, waste, and abuse.
- A governor may choose to limit the list of SGOs to only those that require SGOs to award scholarships exclusively for expenses in connection with schools that participate in the state's school accountability system to enable transparency and monitoring of the impacts of the scholarship program (e.g., the Indiana system).
- A state may have an existing law that requires all SGOs to adhere to State-defined non-discrimination requirements that would apply to SGOs operating under this program or the schools or programs to which they provide scholarships.

Furthermore, a governor may exercise other gubernatorial discretion, within the parameters provided by the statute, when they elect to include SGOs on the list to submit to the Secretary. For example:

- The governor may only include on their list SGOs that award scholarships for certain types of expenses, such as only out-of-school time programs, which are allowable under the statute.

- A governor may only include on their list SGOs that award scholarships to students attending certain schools such as those in rural locations, or only public schools.
- A governor may only include on their list SGOs that prioritize scholarships for the neediest students first, or only students from households below 150% of the area median income (or another amount below the 300% parameter in the statute).

State Discretion to Define “School”

II. Clarify that a state’s definition of “school” applies for this program.

The Treasury Department and IRS should affirm that the term “school” is defined as determined under state law.

The term “school” is used throughout the Notice and § 25F, including in the definition of an “eligible student” which is defined as an individual who “is eligible to enroll in a public elementary or secondary school.” However, the term “school” is not defined in the statute. Defining school for the purposes of this program as the definition of school determined by state law would rightly place the responsibility for setting the definition with the state. It would also align the definition with the definition of school used in Coverdell § 530(b)(3)(B), which is implicated by the reference to Coverdell § 530(b)(3)(A) in the OBBBA statute, and carries a definition of “school” that is ultimately “determined under state law.”

The definition of “school” has many implications for determining eligible students and qualified elementary and secondary expenses. Affirming state discretion over the definition of “school” would ensure SGOs are able to award scholarships consistent with state law. For example:

- A State definition of “school” may include homeschooled, though not otherwise included in the OBBBA or Coverdell statutes. Many states currently include homeschooled in their state definitions of schools.
- A state definition of “school” and/or covered schools or system of schools, may include preschool. Some state constitutions, including for example West Virginia and Wisconsin, cover education starting at age four. Other states refer to their preschool programs as “transitional kindergarten,” making clear the inclusion of preschool in elementary school.
- A state definition of “school” may include other providers of secondary credits to meet requirements for high school graduation.

State Discretion to Interpret Allowable Expenditures Broadly

III. Clarify that states retain the discretion to define expenses that are “required or provided” by a school.

The Treasury Department and IRS should affirm that the definition of qualified elementary and secondary expenses which are “required or provided” by a school, as required under Coverdell § 530(b)(3)(A)(ii), may be broadly interpreted to accommodate local variations in how schools and programs operate.

The terms “required” and “provided” are used in Coverdell § 530(b)(3)(A)(ii) but not further defined. These terms have many implications for determining qualified elementary and secondary expenses and the students who are able to incur them. Many services provided to students, particularly in conjunction with public school and public school students, are often provided by a partner organization or are required only for some students. These programs can vary greatly from community to community. Therefore, it is important to ensure “required” and “provided” can be interpreted broadly enough to capture how these services are experienced in each local context.

For example:

- A school may choose to partner with a community-based organization to serve as their designated providers of extended day/afterschool or summer school programming (similar to Community Learning Centers funded through Nita M. Lowey 21st Century Community Learning Centers grants).
- A college might offer a course or summer program in partnership with a school or school district that is not paid for by the school or school district.
- Though not required by the state, a school district may require all high-school students to participate in a work-based learning opportunity as part of their graduation requirements.
- A state, school district, or school may require only students who perform poorly on core academic courses to participate in summer school programming in order to be promoted but may not offer that programming or may have costs associated.

A restrictive interpretation of expenses that are “required or provided” by a school would deny opportunities for students, particularly students in public schools, to benefit from the scholarship program.

IV. Clarify that states retain the discretion to define “supplementary items and services (including extended day programs).”

The Treasury Department 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.

The interpretation of "supplementary items and services (including extended day programs)" has significant implications for the types of activities covered by this program and the students who participate. The specific situations will vary from state to state, and the state should be responsible for determining what qualifies under this definition. Therefore, it is important to ensure the term can be interpreted broadly enough to capture experiences in each local context.

A state definition of "supplementary items and services (including extended day programs)" may include (so long as they are otherwise eligible), for example:

- afterschool program not on the school campus
- summer school programs
- workforce apprenticeship programs
- field trips with associated costs for students.

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.

V. Clarify that states retain the discretion to define “incurred in connection with the enrollment or attendance.”

The Treasury Department and IRS should affirm that the definition of qualified elementary and secondary expenses which are "incurred in connection with enrollment or attendance" as referenced in Coverdell § 530(b)(3)(A), may be broadly interpreted to accommodate local variations in how schools and programs operate.

The interpretation of "incurred in connection with the enrollment or attendance" has significant implications for the types of activities covered by this program and the students who participate. The specific situations will vary from state to state, and the state should be responsible for

determining what qualifies under this definition. Therefore, it is important to ensure the term can be interpreted broadly enough to capture experiences in each local context.

For example:

- A state definition of “incurred in connection with the enrollment or attendance” may include educational activities controlled by parents and families enrolled in an elementary or secondary school (so long as they are otherwise eligible).
- A state definition of “incurred in connection with the enrollment or attendance” or “tuition” may include tuition for public school students to attend other out-of-district public schools.

A restrictive interpretation of “incurred in connection with the enrollment or attendance” as a qualified elementary and secondary expense would deny opportunities for students, particularly students in public schools, to benefit from the scholarship program.

Scholarship Granting Organization Operations

VI. Clarify that the 90% requirement references all income from qualified contributions, instead of all income of the organization, including unrelated business income.

Under Section 4.01 of the Notice, the Treasury Department and IRS should revise the proposed language to clarify that the income of the organization **does not** include all income of the organization, including unrelated business income, and is limited to qualified contributions segregated in the separate account(s) described in § 25c)(5)(B).

§ 25F(d)(1)(B) requires that a SGO “spends not less than 90 percent of the income of the organization on scholarships for eligible students.” Furthermore, § 25F(c)(3) defines “qualified contributions” as “a charitable contribution of cash to a scholarship granting organization that uses the contribution to fund scholarships for eligible students.” Some individuals may be eligible for a tax credit for a defined portion of their qualified contribution.

The Treasury Department and IRS should interpret “income” to mean income from qualified contributions. Limiting “income” to all qualified contributions, would ensure contributions are used appropriately to fund scholarships for students. It would also enable an organization to

invest in other expenses (e.g. local education foundations that also collect contributions or grants to buy school equipment) or to offset costs such as administration by raising separate funds (e.g. applying for a grant from a foundation to cover costs of a marketing program to reach out to families about the scholarships available).

VII. Affirm that SGOs may focus on specific students, communities, or qualified education expenses for which it chooses to provide scholarships.

Under Section 3.02 of the Notice, we affirm the Treasury Department and IRS's decision to **not** issue proposed regulations that "prohibit an SGO from itself imposing additional governing provisions beyond the requirements imposed by § 25F(c)(5) unless such a provision would conflict with the ability of the SGO to satisfy such requirements."

We agree that the definitions of "SGO," "qualified elementary or secondary education expense," and "eligible student" provided in OBBBA serve only as guardrails, and SGOs may make additional elections within those guardrails. We agree SGOs may focus on specific students, communities, or qualified education expenses for which it chooses to provide scholarships. For example, a SGO may choose to:

- Only award scholarships for certain types of expenses, such as only out-of-school time programs, which are allowable under the statute.
- Only award scholarships to students attending certain schools, such as those in rural locations, or only public schools.
- Only award scholarships to students with disabilities.
- Prioritize scholarships for the neediest students first, or only students from households below 150% of the area median income (or another amount below the 300% parameter in the statute).

We appreciate the opportunity to comment on the Treasury Department and IRS's intent to issue guidance and proposed regulations to implement new individual tax credit for qualified contributions to SGOs (Notice 2025-70/ IRS-2025-0466). If you have any questions regarding these comments, please contact Phelton Moss at pmoss@nsba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Verjeana McCotter-Jacobs".

Verjeana McCotter-Jacobs, Esq.
Executive Director and Chief Executive Officer
National School Boards Association (NSBA)



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