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Comments to the Treasury Department and IRS on the Federal Tax Credit Scholarship Program

December 23, 2025

Mr. Edward Waters
Office of the Associate Chief Council
Internal Revenue Service
Room 5503, P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Notice 2025-70

Dear Mr. Waters:

Thank you for the opportunity to provide comment on Notice 2025-70, regarding regulations to implement the individual tax credit for qualified contributions to scholarship granting organizations established in H.R. 1.

This program will offer American families a meaningful new pathway to pursue educational support options that benefit students attending public, private, and religious schools. The legislative design makes clear that Congress intended a program that would provide flexibility to students and families and maximize state participation. The comments that follow offer Third Way's recommendations for clear and effective regulations for the program that will ensure states are empowered to engage in critical program integrity functions and benefits are broadly accessible to eligible students, including public school students seeking supplemental or specialized services.

Section 2.03 of this notice describes scholarship granting organization (SGO) requirements, including qualified elementary or secondary education expenses, which are defined in statute by reference to Coverdell education savings accounts and limited to such expenses "incurred at, required by, or provided by" eligible schools. This language creates uncertainty regarding eligible services provided by external school partners or that are required by schools, districts, local education agencies (LEAs), or states.

In practice, eligible schools may partner with outside organizations to provide qualifying services that are not financed by the school, district, or LEA—for instance, a community-based afterschool program, a dual-enrollment course offered by a local college, or contracted special education services. Similarly, some students may be required by their school, district, or state to participate in targeted programming, such as high-impact tutoring or summer school courses, that have additional associated expenses charged to families. Although these services are educational in nature and closely connected to the instructional program, their eligibility is a grey area under current language.

We recommend that Treasury include language to clarify that expenses for services “provided by” a partner of an eligible school, or “required by” schools, districts, LEAs, or states for some or all students, qualify as permissible uses of scholarship funds from approved SGOs. Such clarification will preserve the flexibility intended by Congress and ensure that students attending public, private, and religious schools alike are broadly able to benefit from scholarships through the program.

Section 3 of this notice requests input on all aspects of the state certification process. The process currently envisioned by the Treasury Department would mandate that states include on their certification list all SGOs located in the state that request to participate and meet the statutory requirements. Although governors’ discretion over which SGOs are included on the state list is limited, the process as described would unduly constrain governors’ ability to engage in the program integrity authority that is implied under the statute.

As stated on page 12 of this notice, “The Treasury Department and the IRS anticipate that States will be required to have implemented, and to comply with, various procedures to verify that the required information submitted by the covered State is accurate and complete.” This expectation maintains that states do not merely operate as check-box approvers. Under H.R. 1, they are required to identify qualifying SGOs, submit and certify the state list, and undertake this process annually, which implies that the governor has responsibility to ensure ongoing compliance and prevent abuse of the federal tax credit. Moreover, the inclusion in §25F(d) of specific prohibitions on earmarking, self-dealing, and SGO expenditures, as well as income verification requirements, indicate concern from Congress about the potential for fraud, waste, or abuse. Such risks include insufficient separation between donors and beneficiaries of the tax credit or SGOs that inappropriately handle tax dollars. It is unlikely that Congress intended to require that governors automatically include any SGO on their state list, regardless of credible program integrity concerns and with no opportunity for reasonable pre-inclusion due process.

We recommend that Treasury provide language that clarifies that states can conditionally delay SGO approval or require additional investigation or documentation for an SGO to appear on a state list in situations where program integrity concerns are implicated. Such measures constitute anti-abuse risk assessments that are appropriate for governors to oversee in relation to tax dollars, and which would not conflict with the legislative intent to prevent states from applying substantive new requirements on SGOs or making policy judgments about the types of SGOs that can participate in the program.

Section 4.01 of this notice poses an important interpretive question about what is meant by “the income of the organization” in §25F(d)(1)(B). It is likely that interpreting “income” to encompass all income of the organization (including and beyond the qualified

contributions for this program) would pose practical challenges for SGOs. Particularly, the pool of SGOs that are likely to seek eligibility to participate in the program would shrink. Non-profit SGOs that engage in any other qualified non-profit programming or services, have unrelated grant funding, and/or have investment income would be discouraged from participating. Further, such an SGO could fail the 90% income test *even if* 100% of the qualified contributions go directly toward funding scholarships through this program. In effect, most pre-existing non-profit organizations would not be able to qualify as SGOs without undertaking a long and costly reorganization, introducing complexity and barriers to participation that are incongruent with the goals of the legislation.

Based on the statutory structure, it is reasonable to interpret that “income” was intended to apply solely to the qualified contributions segregated in the separate account(s) described in §25F(c)(5)(B). Indeed, every other requirement in §25F(d)(1) pertains exclusively to the income associated with those qualifying contributions:

- (A) regarding school enrollment distribution of scholarship recipients;
- (C) regarding qualified scholarship expenses;
- (D) regarding priorities in providing scholarships;
- (E) regarding earmarked contributions; and
- (F) regarding income limit verification and enforcement.

The section also discretely recognizes that SGOs may have multiple accounts (thus requiring segregation of qualified funds), implying that congressional intent was focused on the discrete funding stream encompassed in those accounts and not all organizational income.

We recommend that Treasury accordingly consider language that would define “income of the organization” as income attributable to qualified contributions maintained in the segregated accounts described in §25F(c)(5)(B), excluding funds held outside those accounts, for the purpose of this section.

Section 4.02(4) of this notice requests comments on how multistate organizations should be expected to satisfy statutory requirements for inclusion on state lists. While organizations that fundraise and award scholarships in more than one state may offer unique educational opportunities to students and families, they are distinct in structure and purpose from SGOs that operate exclusively within one state. As such, each participating state’s obligation to ensure program integrity and compliance with the law should remain paramount.

We recommend that Treasury require approval of multistate SGOs to occur on a state-by-state basis, whereby each state independently verifies that all statutory requirements are satisfied with respect to the SGO's operations within that state.

Thank you for your time and consideration of these comments, and please do not hesitate to contact us should you have further questions.

Sincerely,

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