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Internal Revenue Service  
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Room 5503  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

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New America is an independent, nonprofit policy and research organization. Our PreK-12 team, as a part of the Education Policy Program, focuses on strengthening and improving public education to better ensure all students have equitable access to high quality learning opportunities.

We appreciate the opportunity to provide feedback on the US Department of the Treasury's implementation of the Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations (SGOs). In order to preempt potential harms in the operations of the tax credit system and to bolster the educational options embraced by most students and families, we have outlined ways that the Treasury Department can use its forthcoming regulations to ensure the execution of this program is equitable and efficient.

### Treasury should clarify federal nondiscrimination requirements.

Nondiscrimination laws are applicable wherever federal funds are distributed. For this program, the US Department of the Treasury should clarify that nondiscrimination laws that protect students and families, including all relevant civil rights and disability rights laws, apply to all SGOs and to all educational institutions and providers receiving payment from scholarship funds. The Department can thereby ensure that taxpayer dollars are not applied to entities that discriminate. Treasury should also require that states monitor SGOs and educational institutions and providers to ensure compliance with state nondiscrimination requirements.

### Treasury should affirm State discretion to set requirements for Scholarship Granting Organization (SGO) eligibility.

The US Department of the Treasury should affirm that, in accordance with 26 U.S.C § 25F(g)'s description of the state's role in determining the set of eligible SGOs and transmitting the list of eligible organizations to the Department, states have discretion to set state-specific eligibility



and operations requirements for SGOs. In order for states to meet the educational needs of their students, Governors and their designees must be allowed to determine what specific requirements must be met by SGOs in the state. They should be encouraged to work with their State Education Agencies to determine these parameters to ensure that the scholarship program operates in a manner that is in the best interests of public education systems in their states.

Specifically, in keeping with the law's specification that qualified elementary and secondary education expenses include those incurred in connection with a student's enrollment or attendance at a public, private, or religious school, states should require that the list of participating SGOs include organizations specifically providing scholarships to students enrolled in public schools as well as those supporting students enrolled in private schools.

**Treasury should affirm State discretion to interpret the laws regarding allowable expenditures in line with the needs of students in their states.**

The Department should clarify that states retain the discretion to define expenses that are "incurred in connection with the enrollment or attendance of the [scholarship recipient] as an elementary or secondary school student at a public, private, or religious school" or are "required" or "provided" by such a school. States should continue to be able to determine the limits and flexibility of the funds from this program.

**Treasury should issue specific rules to ensure effective, transparent, and fair SGO operations.**

SGOs are key to the implementation of this new law and their operations should be aided by meaningful governance and oversight. The following rules and clarifications would support effective, transparent, and fair SGO operations.

- The law states that each SGO must spend at least 90 percent of the income of the organization on scholarships for eligible students. The Department should clarify that this requirement refers to 90 percent of the income from contributions for these scholarships rather than 90 percent of all organizational income. The US Department of the Treasury should also affirm that SGOs may focus on specific students, communities, or qualified education expenses for which it chooses to provide scholarships, as is typical. In keeping with the law's definition of qualified elementary and secondary education expenses, SGOs with a focus on services provided to



students enrolled in public schools must not be discouraged from participation in this program.

- In the interest of transparency and continuous improvement, states should require public, annual reporting of de-identified data about each SGO's scholarship recipient, including school of attendance, zip code, family income, and category of expenditure.
- To ensure compliance with, and to avoid the appearance of impropriety regarding, the law's provision that SGOs may not earmark or set aside contributions for scholarships on behalf of any particular student, states should prohibit SGOs from providing scholarships to the children or dependents of donors.

We thank the US Department of the Treasury for the opportunity to provide feedback on the future of the Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations. For any questions or clarifications please reach out to Lisa Guernsey, Senior Director, Birth–12th Grade Policy ([guernsey@newamerica.org](mailto:guernsey@newamerica.org)).