

December 26, 2025

SUBMITTED VIA FEDERAL eRULEMAKING PORTAL
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Internal Revenue Service
CC:PA:01:PR (Notice 2025-70)
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: Edward Waters, Office of the Associate Chief Counsel (Income Tax &
Accounting)

**Re: Request for Comments on “Individual Tax Credit for Qualified
Contributions to Scholarship Granting Organizations”**
Agency/Docket Number: IRS-2025-0466
Document: Notice 2025-70

Dear Mr. Waters:

On November 25, 2025, the U.S. Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) issued a notice requesting comments from the public on forthcoming proposed Treasury regulations implementing 26 U.S.C § 25F (“§ 25F”), the new federal scholarship tax credit (“FSTC”).^{1 2} In response to that request, the Defense of Freedom Institute for Policy Studies (“DFI”) offers below our recommendations and information that we believe will assist Treasury and the IRS in determining how to implement the FSTC provisions in a manner that is

¹ U.S. DEP’T OF THE TREASURY, REQUEST FOR COMMENTS ON INDIVIDUAL TAX CREDIT FOR QUALIFIED CONTRIBUTIONS TO SCHOLARSHIP GRANTING ORGANIZATIONS (2025) (hereinafter “Notice 2025-70”), available at <https://www.irs.gov/pub/irs-drop/n-25-70.pdf>.

² Pub. L. No. 119-21, title VII, § 70411, 139 Stat. 72 (2025), commonly known as the One Big Beautiful Bill Act.



faithful both to the statutory text and to Congress’s purpose for enacting the law. In § 25F, Congress provides individual taxpayers with a tax incentive to encourage charitable donations for the purpose of expanding educational opportunities for K-12 students across the country, thereby improving student outcomes. Specifically, the law encourages Americans to donate to scholarship-granting organizations (“SGOs”) to pay for the qualified educational expenses of eligible students in each state that elects to participate in the program.

DFI comes to this comment with a strong grounding in the topic. Launched in 2021, DFI is a national nonprofit organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and work. Former senior leaders of the U.S. Department of Education under former Secretary Besty DeVos created DFI in part to promote education freedom for families and teachers. One of DFI’s co-founders has decades of experience enacting and implementing school-choice programs across the country. Both of the co-founders have worked with Secretary DeVos since she developed and promoted a federal tax credit starting in 2017.

I. Background

A. The Law

Under § 25F, individual taxpayers are eligible for a credit of up to \$1,700 against their income tax for that taxable year if they make a cash donation to an SGO that meets certain requirements and funds scholarships covering defined educational expenses for eligible elementary and secondary students.

Student Requirements: Students are eligible for scholarships only when their state voluntarily elects to let students in its jurisdiction benefit from § 25F scholarships (“Covered State”). Students must be “eligible to enroll in a public elementary or secondary school” and meet the income requirement of not being a



member of a household with an income greater than 300 percent of the area median gross income (“AMI”) in the prior calendar year.³

Taxpayer Benefits and Requirements: Eligible taxpayers must be citizens or residents of the United States within the meaning of 26 U.S.C. § 7701(a)(9).⁴ Taxpayers are eligible for the credit regardless of their state of residence, so long as they contribute to an SGO operating in a Covered State. Taxpayers are precluded from receiving the benefit of a tax deduction pursuant to 26 U.S.C. § 170 for the amount they receive as a credit under § 25F.⁵ With the aim of preventing taxpayers from using the same dollars to benefit from both state SGO tax credits and the FSTC, § 25F provides that the amount allowed as a federal tax credit “shall be reduced by the amount allowed as a credit on any State tax return.”⁶ Unused credits may be carried forward for five years.⁷

State Requirements: Any of the 50 states and the District of Columbia may participate in the FSTC by “voluntarily elect[ing] to participate” under § 25F for any calendar year (beginning with 2027) and submitting to the U.S. Secretary of the Treasury (the “Secretary”) “a list of the [SGOs] that meet the requirements” described in the statute “and are located in the State” (“State list” or “State SGO list”).⁸ Governors are specifically empowered to submit the State SGO list, but § 25F also provides that the State list may be submitted “by 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.”⁹

³ *Id.* § 25F(c)(2)

⁴ 26 U.S.C. § 25F(a).

⁵ *Id.* § 25F(e).

⁶ *Id.* § 25F(b)(2).

⁷ *Id.* § 25F(f).

⁸ *Id.* § 25F(c)(1); *id.* § 25F(g)(1)(A).

⁹ *Id.* § 25F(g)(1)(B).



With respect to the first calendar year of the program, 2027, such states must elect to participate and submit the SGO list “as early as practicable”; after that, they must do so prior to January 1 of the applicable calendar year.¹⁰

Treasury Requirements: The law directs the Secretary to issue “regulations or other guidance” that he concludes are necessary to carry out the FSTC, including the requirements relating to electing to participate in the program and submitting a list of SGOs.¹¹

SGO Requirements: Individuals may only receive a tax credit under § 25F for donations to an SGO that operates in compliance with the law’s requirements. First and foremost, such SGOs must be 501(c)(3) organizations and exempt from taxation under 501(a), and they cannot be private foundations.¹² As discussed previously, they must be included on a State SGO list for the relevant calendar year.¹³

Compliant SGOs must maintain a separate account specifically for funds received under the FSTC, and they must prevent co-mingling them with other funds.¹⁴ The statute allows multiple segregated accounts for FSTC contributions, presumably for SGOs operating in more than one state or to manage multiple types of K-12 scholarships.

SGOs must use FSTC contributions “to fund scholarships for eligible students solely within” the Covered State.¹⁵ In addition, SGOs must:

- Provide scholarships “to 10 or more students who do not all attend the same school”;¹⁶

¹⁰ *Id.* § 25F(g)(1)(A).

¹¹ *Id.* § 25F(h).

¹² *Id.* § 25F(c)(5)(A).

¹³ *Id.* § 25F(c)(5)(D).

¹⁴ *Id.* § 25F(c)(5)(B).

¹⁵ *Id.* § 25F(c)(3).

¹⁶ *Id.* § 25F(d)(1)(A).



- Spend “not less than 90 percent of the income of the organization on scholarships for eligible students”;¹⁷
- “[N]ot provide scholarships for any expenses other than” expenses defined by statute as “qualified elementary or secondary education expenses” (as discussed just below);¹⁸
- Prioritize providing scholarships to eligible students awarded a scholarship in the previous school year and, after that, eligible students who are siblings of those who have received such an SGO scholarship;¹⁹
- Not “ earmark or set aside contributions for scholarships on behalf of any particular student”;²⁰
- Verify that the household income of any student receiving a scholarship under the program does not exceed 300 percent of the area median gross income;²¹ and
- Not award a scholarship to any disqualified person.²²

Beyond these explicit requirements, SGOs can expect, as 501(c)(3) organizations, to abide by all IRS reporting and recordkeeping requirements, including the documentation provided to donors.

The statute requires SGOs to use § 25F contributions to cover only “qualified elementary or secondary education expenses,” which the statute defines broadly, referencing federal law establishing Coverdell education savings accounts.²³ By pointing to Coverdell, Congress recognizes students in “public, private, or religious school” and encompasses a wide variety of education expenses. The three types of scholarship programs most likely to be launched initially—those for tutoring, those

¹⁷ *Id.* § 25F(d)(1)(B).

¹⁸ *Id.* § 25F(d)(1)(C).

¹⁹ *Id.* § 25F(d)(1)(D).

²⁰ *Id.* § 25F(d)(1)(E).

²¹ *Id.* § 25F(d)(1)(F); *id.* § 25F(c)(2)(A).

²² *Id.* § 25F(d)(2)(A).

²³ *Id.* § 25F(c)(4); *id.* § 503(b)(3)(A).



for special education therapies, and those for private-school tuition and fees—are explicitly listed in Coverdell.

B. Purpose of the FSTC Program

When reporting out the original House version of the 2025 budget reconciliation package, the House Committee on the Budget wrote the following about § 74011, which was based on H.R. 833 (2025), the Educational Choice for Children Act:

The Committee believes that contributions to charitable organizations that provide scholarships for elementary and secondary school expenses and expand educational freedom for parents and students should be encouraged. Qualified Elementary and Secondary Education Scholarships are valuable tools for millions of American families and students to help parents and students have access to the right school that best meets a student’s needs. The Committee believes the use of elementary and secondary education scholarships should be expanded to help ease the educational cost burden for parents and expand educational opportunities for students. Because of the education divide at the state level, many states have not adopted school choice programs that promote parental choice and educational freedom for students. By offering this incentive at the federal level, the Committee believes that this will expand affordable education options across America so that students receive the education most tailored to their individual needs. Ultimately, the Committee believes that a new income tax credit to encourage giving to these organizations will help to promote school choice, parental choice, and educational freedom.²⁴

²⁴ H.R. REP. NO. 119-106, pt. 2, at 1525 (2025).



C. Treasury’s and IRS’s Request for Comment and Allowance of Advance Election

Treasury’s and the IRS’s notice, issued on November 25, 2025, requested public comment by December 26, 2025, “[i]n anticipation of issuing the forthcoming proposed regulations” pursuant to the FSTC (“Notice 2025-70”). It “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.”²⁵ The notice offered tentative views on several aspects of the process through which states elect to participate and submit a list of SGOs to the Secretary, as well as on the interpretation of statutory requirements for SGOs that participate in the FSTC. Importantly, the notice recognized that § 25F requires two separate actions on the part of states that wish to participate in the program, to be performed either contemporaneously or at different times: they must “elect to participate” in the program *and* they must submit the State SGO list to the Secretary.²⁶

Accordingly, on December 12, the IRS issued Revenue Procedure 2026-6 (“Rev. Proc. 2026-6”), which allows governors and other authorized representatives of states to make an advance election to participate in the FSTC for calendar year 2027.²⁷ The procedure instructs the states to submit notice of such advance election on or after January 1, 2026, using Form 15714, entitled *Advance Election to Participate Under Section 25F for 2027*.²⁸ It also states that, “[o]nce a State’s Advance Election for calendar year 2027 has been made, the only subsequent submission

²⁵ Notice 2025-70, *supra* note 1, at 1.

²⁶ *Id.* at 7.

²⁷ U.S. DEP’T OF THE TREASURY, REV. PROC. 2026-6, at 1–2 (2025) (hereinafter “REV. PROC. 2026-6”), available at <https://www.irs.gov/pub/irs-drop/rp-26-06.pdf>.

²⁸ *Id.*; U.S. DEP’T OF THE TREASURY, FORM 15714: ADVANCE ELECTION TO PARTICIPATE UNDER SECTION 25F FOR 2027 (2025), available at <https://www.irs.gov/pub/irs-pdf/f15714.pdf>.



that will be processed by [Treasury] and the IRS is the submission of the State SGO list (including all required certifications).”²⁹

D. Regulatory Regime

In § 25F(h), Congress gives the Treasury Secretary authority to “issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this section.” It continues by giving two specific examples of the regulations or other guidance that might be required for: “(1) providing for enforcement of the requirements under subsections (d) [for SGOs] and (g) [for States]; and (2) with respect to recordkeeping or information reporting for purposes of administering the requirements of this section.”

Congress has not, however, asked Treasury to create a whole new regulatory regime for SGOs. Instead, by requiring all SGOs to become an organization “described in section 501(c)(3) and exempt from tax under section 501(a),” it has imposed on SGOs the existing regulatory regime for tax-exempt organizations. Without any additional rules and regulations, the regime for tax-exempt entities would provide accountability by, among other things, requiring SGOs to file annual tax documents and submit themselves to audit.

States can play a complementary role to Treasury and the IRS because they can regulate any entity doing business in their jurisdiction. However, they are not allowed to preempt the role of the IRS and Treasury in regulating on federal tax policy. They may, for example, require SGOs to register with the state before soliciting charitable donations in the state, but states or governors may not preempt the federal role in regulating 501(c)(3) organizations or the subset of SGOs identified in § 25F. The authority to regulate SGOs’ compliance with § 25F lies fully with Treasury. Treasury must, therefore, resist the temptation to deputize governors or states as its surrogates in exerting its federal tax authority over SGOs.

²⁹ REV. PROC. 2026-6, *supra* note 27, at 4.



The statute caused some confusion on this point, because it also requires each state in § 25F(g)(1)(A) to signal that it “voluntarily elects to participate under this section” and 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.” There is, however, a clear demarcation between “regulating” (the role of Treasury) and “electing to participate” and “identifying SGOs” (the roles of states). This charge to states and their governors must be implemented in a way that does not intrude on Treasury’s responsibilities.

II. Comments on Forthcoming Treasury Regulations Implementing § 25F

In general, the following comments roughly track the order of issues as presented in Notice 2025-70, although we have occasionally combined sections or raised issues that we believe need clarification.

A. Timing of Guidance and Regulations

We commend the Administration, Treasury, and the IRS for expediting rulemaking for § 25F despite several pressing priorities. We are grateful for the recognition that SGOs need sufficient time to prepare for implementation in 2027—a complex task that involves putting into place systems for fundraising, verification of applicant eligibility, scholarship distribution, and donor and IRS documentation, among others. Before SGOs can confidently start spending resources to build these systems, they need to know they will be included in State SGO lists. Before states and governors will feel confident submitting their State SGO lists, they will need to review final rules.

With this Notice 2025-70 and Rev. Procedure 2026-6, Treasury has already quieted some of the fears about successfully implementing § 25F. The Administration and Treasury is clearly giving this rulemaking the attention it deserves, and governors appreciate the mechanism to assure families in advance that they will indeed be able to access K-12 scholarships for their children.

DFI respectfully asks that Treasury and the IRS continue prioritizing this rulemaking. In DFI’s discussions across the country, SGOs suggest that they will



need at least six months after being included on a State list to successfully raise funds and provide scholarships in 2027. Every week after June 30, 2026, compromises their ability to help students succeed with their education.

B. Amount of § 25F Credit

Treasury Regulations Should Specify that, Pursuant to § 25F, Married Couples Filing Jointly May Claim Two Tax Credits of up to \$1,700 Each.

In section .02 of Notice 2025-70, Treasury does not specifically address a key issue related to the amount of the credit—that is, will each individual when filing jointly as a married couple receive up to the full \$1,700 credit allowed each year?

§ 25F(a) provides that “an individual who is a citizen or resident of the United States” may claim “as a credit against the tax imposed by this chapter for the taxable year an amount equal to the aggregate amount of qualified contributions made by the taxpayer during the taxable year.”³⁰ § 25F(b)(1) limits that “credit allowed under subsection (a) to any taxpayer for any taxable year” to \$1,700.³¹

The FSTC statute does not explicitly mention married couples filing jointly—leading some to mistakenly conclude that joint filers should be treated as a single tax filer. Misreading the statute on this issue would have serious consequences. First, it will dramatically reduce the amount of funds available for K-12 scholarships, thereby limiting the number of students who can access supplemental education services or new school options. Second, it will increase the non-scholarship operational costs for SGOs, because it automatically raises per-donation fundraising expenses. Finally, from a societal perspective, it would be one more signal that the federal government is willing to condone a “marriage penalty,” in this case by failing to reward a couple’s charitable giving.

³⁰ 26 U.S.C. § 25F(a).

³¹ *Id.* § 25F(b)(1).



Pursuant to IRS regulations, a joint return consists of two taxpayers,³² and tax-court decisions confirm this interpretation except in cases where the statute explicitly states otherwise.³³ Instances where federal statutes explicitly clarify that a married couple filing a joint return is to be treated as one individual—including in a provision of the Casualty Loss Deduction³⁴—demonstrate that, where Congress intends to treat such couples as one individual or taxpayer, it has done so.

The FSTC presents a particularly strong case for allowing married couples filing jointly to take a tax credit for each individual’s qualified contributions up to \$1,700 because the couple does not receive any financial benefit for each individual’s credits—all benefits accrue to the SGO to which the contribution is given and ultimately to the student to whom the scholarship is granted pursuant to the FSTC.

We can compare this charitable tax credit to typical tax credits where the financial benefits accrue to individuals when the statute is similarly silent on joint filers. For example, with the now-expired tax credits provided to encourage the purchase of electric vehicles, Treasury decided to allow the tax credit for each member of the couple when each one bought an EV car.³⁵ The same logic should be applied during the current Administration. Treasury and the IRS should include in their § 25F regulations the confirmation that each taxpayer in a married couple filing jointly is entitled to a tax credit of up to \$1,700 for his or her qualified contribution under the FSTC—meaning that the married couple filing jointly is entitled to a combined

³² 26 C.F.R. § 1.6013-4(b) (“Although there are two taxpayers on a joint return, there is only one taxable income.”).

³³ See *Dolan v. Comm’r*, 44 T.C. 420, 428 (1965) (treating each spouse independently for the purpose of tax assessment and notice); *Rodney v. Comm’r*, 53 T.C. 287, 307 (1969) (treating spouses filing jointly as separate taxpayers for the purpose of criminal proceedings); see also 26 U.S.C. § 30D (entitling a married couple filing jointly to claim two credits of up to \$7,500 on their return if each spouse purchased a new electric vehicle); 26 U.S.C. § 25E (similar provision for the purchase of used electric vehicles).

³⁴ 26 U.S.C. § 165(h)(4)(B)) (“For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as one individual.”).

³⁵ 26 U.S.C. § 25E; 26 U.S.C. § 30D.



up to \$3,400 in credits reducing the couple’s tax liability for the applicable calendar year.

C. State SGO Lists and “Certifications”

A State Participating in the FSTC Program Must Include on the State List All SGOs that Meet § 25F Requirements and Are Located in the State.

DFI agrees with Treasury,³⁶ as a matter of the plain language of § 25F, that each state that elects to participate in the FSTC must include on its list of SGOs submitted to the Secretary *all* organizations located in the state that request to be include on the SGO list and that meet—or, in the case of requirements that SGOs can only fulfill when the FSTC begins to operate, affirm that they will meet—the SGO requirements described in § 25F.

As Treasury recognizes, the statute is clear on this point: States electing to participate in the FSTC must provide to the Secretary “a list of *the* scholarship granting organizations that meet the requirements described in” the provisions of § 25F “and are located in the State.”³⁷ It does not say a list of SGOs, much less a list of curated SGOs. The inclusion in the statute of “the” as a definite article before “scholarship granting organizations” clearly signifies that each Covered State’s list must include all SGOs located in the state that meet the statutory requirements.

This interpretation also aligns with the limited role of states contemplated in statute. Once states elect to participate in the program, their role is simply to identify for the IRS which SGOs are located in the state and will abide by the program requirements. § 25F clearly does not allow governors or other state officials to exclude SGOs based on the student populations they serve or the kind

³⁶ Notice 2025-70, *supra* note 1, at 8 (“The Treasury Department and the IRS anticipate that the forthcoming proposed regulations would provide, consistent with § 25F(g)(1)(A), 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.”).

³⁷ 26 U.S.C. § 25F(g)(1)(A) (emphasis added).



of schools their scholarship recipients attend. Treasury should not countenance such political mischief, which would run contrary to the purpose of the statute.

Treasury Should Recognize that SGOs “Located in the State” Include All SGOs That Are Registered to Do Business in the State and in Compliance with State Laws, Including Laws Related to Solicitation of Charitable Contributions.

DFI recommends that Treasury provide by regulation that a state electing to participate in the FSTC must include on its SGO list all SGOs that are registered to do business in the state and that abide by state laws, including those relating to the solicitation of charitable contributions. State lists should not be limited solely to SGOs that are headquartered or physically located within its borders. Treasury may want to explicitly acknowledge that business registration is a proxy for being subject to the personal jurisdiction of the state’s courts.

The statute does not indicate at all that Congress meant to require SGOs to establish new and separate SGOs in each state where a multi-state SGO might operate. In fact, by requiring multiple, separate accounts for managing funds, and prohibiting co-mingling those funds, Congress clearly anticipated that multi-state SGOs would need to rely on these provisions.

Interpreting “located in a state” to mean registered to do business in a state and complying with state law would reduce administrative and pecuniary burdens for SGOs, especially those that operate in multiple states or desire to do so. It would also alleviate burdens for the IRS related to recognizing the tax-exempt status of sundry new 501(c)(3) organizations, because a multi-state SGO could operate in each Covered State using segregated accounts without needing to establish and maintain separate 501(c)(3) organizations in each state.

In clarifying the meaning of “located in the State,” DFI encourages Treasury to be sensitive to the non-scholarship costs of complying with state registration laws. These costs would presumably be covered by the up to 10 percent of income that is left over after meeting the requirement to spend 90 percent on scholarships for



students. The heavier the registration requirements, the fewer the funds available for K-12 scholarships.

Treasury Should Not Impose on Governors or States Onerous Verification Requirements for Organizations Included on Their SGO Lists.

In Notice 2025-70, Treasury and the IRS appear to envision that Covered States will take on the primary role in verifying compliance of the SGOs on their State lists.³⁸ The Notice says that Treasury plans to require each Covered State to verify eligibility of both multi-state SGOs and single-state SGOs, noting that “[r]eliance by a covered State on self-certifications by SGOs would not be sufficient for this [verification].”³⁹ Thus, Treasury would require an “annual certification” by the authorized individual or entity that each SGO on the State list will comply in the next year with a litany of requirements provided in the statute.⁴⁰

Treasury’s use of the term “certification” in describing the governors’ role raises some concerns, depending on how Treasury defines that term. The statute does not use the term “certify” in § 25F(g)(1)(A), in which governors are merely asked to provide a list that “meets the requirements described in subsection (c)(5).” In contrast, in the very next provision in statute, states are explicitly required to “include a certification that the individual, agency, or entity submitting such list on behalf of the State has the authority to perform this function.” The term “certify” could imply some level of legal liability if the certification proves incorrect, and Treasury should be clear that is not its intent as it defines the governors’ roles.

Further, Notice 2025-70 contemplates a regime where each Covered State will be required to prove to Treasury that it “has adopted, and is complying with, policies and procedures designed to enable the State to make its *own independent*

³⁸ See Notice 2025-70, *supra* note 1, at 8 (“The Treasury Department and the IRS interpret § 25F(g) as requiring each covered State to verify that each organization on the State’s list satisfies all of the requirements of § 25F(c)(5).”).

³⁹ *Id.* at 9.

⁴⁰ *Id.* at 10–11.



determination that each organization on the State list is required by the organization’s organizational documents or bylaws to satisfy, and is operating in a manner that satisfies, each of the requirements of § 25F(c)(5).”⁴¹

Forcing the state to develop mechanisms to independently verify compliance with each of the law’s provisions raises concerns. § 25F does not specifically require states to take on this new burden, and the IRS should be hesitant to mandate such verification mechanisms when it has other and better options. In addition, it is not hard to imagine scenarios where Treasury in a future Administration could undermine congressional intent by refusing to accept a state’s certification procedures, thus depriving children in the state of the benefit of K-12 scholarships.

If Treasury gives governors too strong of a “gatekeeper” role as families seek to improve their children’s education, it risks undercutting the full potential and congressional intent of the FSTC. DFI recognizes that many governors would welcome a strong gatekeeper role tied to the long list of certification requirements where they serve as the final judge regarding compliance. On one hand, § 25F creates a new mechanism to generate revenue for K-12 education in a governor’s state. On the other, Treasury rules could create a certification process that, by allowing governors to exclude otherwise eligible SGOs and while hiding their political agenda, empowers governors (not families) to control where § 25F contributions will flow.

This is a bipartisan concern. Governors associated with both parties could make biased SGO decisions. It should not be controversial to recognize that governors are political creatures, and they will be tempted to use the inclusion of entities on the State SGO list to their political advantage. Because the labor unions that represent teachers and other school employees play such a dominant role in our elections, and because those unions have opposed the federal scholarship tax credit, governors from their favored party might skew their lists to benefit their

⁴¹ *Id.* at 11 (emphasis added).



electoral ally, while the other party’s governors might skew their lists to punish their electoral opponent. It would be best to keep SGO verification as far as possible from partisan politics.

Placing too much responsibility on states might also chill participation. Even governors who are inclined to support a full range of educational opportunities under the FSTC might be less inclined to participate if they must expend precious resources to establish new procedures to independently certify that every single SGO on its list meets, or is expected to meet, the § 25F requirements. They will rightly be wary about participating in the program if Treasury’s certification standard exposes them to litigation risks in the event that they mistakenly certify SGO compliance and that SGO later runs afoul of § 25F requirements. By chilling states from electing to participate in the FSTC while offering other states a mechanism to exclude politically disfavored SGOs from offering scholarships, Treasury’s certification process could lead to outcomes that run directly contrary to the goal of Congress in enacting this nationwide tax credit.

Demanding an independent and muscular certification role for Covered States would not only be at odds with the statutory text, but it could also contravene the expressed legislative purpose of the FSTC to expand educational opportunities for students across the country. As the House Budget Committee expressed in its report, “Because of the education divide at the state level, many states have not adopted school choice programs that promote parental choice and educational freedom for students. By offering this incentive at the federal level, the Committee believes that this will expand affordable education options across America so that students receive the education most tailored to their individual needs.”⁴² Charging states, without support from the statutory text, with the role of gatekeeper between eligible students and SGOs that wish to serve them would wholly frustrate this purpose of the FSTC statute.

⁴² *Supra* note 24.



Treasury does not need to assume that governors must play an activist or muscular role in determining the State SGO list. DFI contends that it is neither necessary nor wise to do so. Treasury should instead restrict the governors' role to one of verification.

Treasury Should Explicitly Acknowledge in Rules That SGOs, Not Government, Are Empowered to Design Their Scholarship Programs.

While Treasury did not request comment on this point, DFI recommends that regulations make clear that SGOs, not states or governors, dictate how scholarship programs are designed and executed. SGOs are fully empowered under statute to design their programs as they see fit. They get to decide what types of scholarships will best serve their community and how best to successfully raise funds for them.

Under § 25F, SGOs do need to work within several constraints. First, they can only serve students who are eligible to enroll in a public elementary or secondary school with household incomes below 300 percent of AMI.⁴³ However, they can focus on a sub-group, including the lowest-income students, students with certain types of disabilities, or other traits, such as connections to a specific faith community or the military. Second, SGOs must ensure that their scholarships only cover qualified expenses.⁴⁴ However, they are not compelled to cover all qualified educational expenses. In fact, we anticipate that, consistent with the prior experience of state-based programs, most SGOs will initially focus on providing scholarships for tutoring, afterschool programs, special needs therapies, and private-school tuition and fees. For the third area of scholarship design—the selection of education providers—the SGO has no statutory constraints. They can, for example, vary scholarship amounts to match the individual needs and circumstances of each recipient.

⁴³ 26 U.S.C § 25F(c)(2).

⁴⁴ *Id.* § 25F(c)(4).



Treasury Should Allow Governors and States to Use SGO Self-Certification of Compliance for Key Provisions When Appropriate.

Treasury has correctly read the statute to say that governors, once they voluntarily elect to participate in the FSTC, must then provide a State SGO list comprising all the compliant SGOs “located in the State.” Treasury recognizes that the language in § 25F(g)(1)(A) does not give governors or states the authority to pick and choose which SGOs meet the requirements of the law. Governors cannot add to the requirements in the law, and they cannot subtract from them.

Treasury could, however, thwart its own policy about the largely ministerial role of governors regarding State SGO lists if the department simultaneously gives those governors the tools to curate their own lists through an onerous certification process. Unfortunately, the nature of some of the provisions in § 25F(c)(5) lend themselves to such mischief. For example, how exactly can a governor “certify” that an SGO will, months into the future before FSTC donations are even permitted, provide at least ten scholarships? If they reasonably claim they cannot make such certifications, will children in the state be deprived of FSTC-funded scholarships? Similarly, how can they “certify” that the SGO will spend 90 percent of income on scholarships months beforehand? Could a governor certify in advance of an SGO’s distributing even a single scholarship that the SGO will prioritize scholarships consistent with the law?

Treasury should simply recognize that it will be impossible for Covered States to certify that SGOs are properly carrying out the requirements of § 25F before SGOs begin participating in the program. At most, until the SGOs operate under § 25F for a full year, a Covered State can only promise that an SGO is aware of certain § 25F requirements and has plans to comply with those requirements.

We recognize that Congress, in making last-minute changes to the draft bill, did not fully anticipate how a governor would compile the State SGO list. In some cases—such as 501(c)(3) status—verification is simple, and it is not unreasonable to ask governors to perform that task (although the IRS could also reasonably perform that function using its own portal). Other provisions in § 25F(c)(5) could be verified



through affidavits under threat of perjury, especially before the SGO has any track record to be verified.

DFI agrees narrowly with Treasury that, as Notice 2025-70 asserts, “[r]eliance by a covered State on self-certifications by SGOs would not be sufficient.” For a few items, self-certification would be absurd and insufficient, including 501(c)(3) status. But for many other items, self-certifications are the best option, and perhaps the only option short of giving governors inordinate control over the State SGO list. Exhibit A includes some sample affidavits developed through the FSTC Coalition that concretely demonstrate how governors could verify whether SGOs should be included in their State lists.

DFI does acknowledge that Treasury could rely on third-party verifications instead of self- or gubernatorial certifications. For example, Treasury might argue under § 25F(h) that it has authority to impose programmatic and financial audits on any organization interested in becoming an SGO. Thus, the auditor, rather than the governor, would prospectively verify that the SGO has the systems in place to comply with the law and has retrospectively done so.

Because third-party verification could impose substantial costs on SGOs or states, Treasury should either not resort to them or make their use as targeted and light as possible. Third-party expenses would be mandated both before SGOs are allowed to raise FSTC contributions and afterward when only 10 percent of FSTC contributions can be used for non-scholarship costs. Such costs should be weighed against the potential risk to taxpayers and families if an SGO is included on a State list and then falls out of compliance—say, by providing nine scholarships instead of 10. It is worth noting that Congress removed the auditing requirements that were in the original bill, presumably because it was aware of the existing auditing requirements for tax-exempt entities and it did not want to impose onerous costs and burdens on SGOs.



If Governors Are Given Authority to Circuitously Curate State Lists through the Certification Process, Treasury Should Give Rejected SGOs the Opportunity to Appeal.

Should Treasury rebuff DFI's plea to restrict the governors' role to one of verification, DFI would respectfully recommend that the department at least provide interested groups with the right to appeal a state decision, perhaps to an Administrative Law Judge. Because this process could be expensive, we would encourage the removal of related expenses from the calculation of the 90-percent threshold under § 25F(d)(1)(b).

To prevent the use of this appeal process for political gamesmanship, SGOs should be allowed to raise FSTC donations and provide scholarships in the state until the case is resolved. Because of the uneven power dynamics between governors and nonprofit entities, the burden of proof to show that the SGO fails to comply with the law should fall on the governor.

Treasury should be particularly vigilant in ensuring that governors do not indirectly violate religious freedom or the autonomy of religious schools through a certification process. Many faith-based organizations hope to serve families and students by expanding their educational programs, and it would hobble the effectiveness of the FSTC if Treasury rules allow governors and states to capriciously (and unlawfully) exclude religious schools or SGOs from participating.

Treasury Should Allow a Covered State to Remove an SGO from the Next Calendar Year's State List Only If the SGO No Longer Meets the § 25F Requirements.

Treasury has an interest and obligation to protect students who receive FSTC-funded scholarships in one year from losing their scholarships in the next year for arbitrary or capricious reasons. Congress prioritized the continuation of scholarship recipients' schooling and protecting them from disruptions in their



educations,⁴⁵ and governors should not be allowed to contravene congressional intent by removing an SGO from a State list without cause.

In its regulations, Treasury should make clear that a state may only remove an SGO from its State list if the SGO fails to comply with the requirements of § 25F. This rule would apply to the current calendar year and future years. States would, of course, retain the right to reverse a decision to voluntarily participate in the FSTC for the next calendar year, but the rules should clarify that states are not allowed to remove individual SGOs to advance political or policy agendas or to discriminate against faith-based institutions.

Treasury Should Post the State SGO Lists in a Timely Fashion on a Website that Can Be Accessed by Taxpayers Who Want to Contribute to Qualified SGOs.

The final, enacted version of § 25F does not require Treasury to make the State SGO lists readily available to the public, but it is in Treasury's interest to do so. DFI recommends the use of an online portal to help protect taxpayers from sham SGOs pretending to be qualified to accept FSTC donations. Over time, the website could be expanded to include information and links that will allow donors to make more-informed decisions about which SGOs they might want to support.

D. Multi-State SGOs

Treasury Should Allow, Even Welcome, Multi-State SGOs.

The FSTC is technically silent on multi-state SGOs—that is, those SGOs that provide K-12 scholarships in more than one state. Opponents to the FSTC have argued that last-minute additions to the legislation somehow require each SGO to operate self-reliantly in a single state. Treasury should reject these strained analyses as a

⁴⁵ *Id.* § 25F(d)(1)(D)(i).



flawed interpretation of statute driven more by the desire to create administrative obstacles than to protect taxpayers or serve the best interests of children.

By welcoming multi-state SGOs, Treasury would merely be applying its existing regulatory regime for tax-exempt entities. Multi-state 501(c)(3) organizations, including those that operate as SGOs, are already common. The elevation of SGO contributions from tax-exempted to tax-credited does not warrant changes that would place additional administrative burdens on people and institutions.

In establishing the FSTC, lawmakers plainly contemplated a nationwide program that would include participation by SGOs operating in multiple states, including several privately funded and state-funded SGOs that already provide scholarships in several states. When the FSTC first becomes effective in 2027, there could be a paucity of SGOs. It will simply take time for SGOs to get on State lists, ramp up their fundraising activities, and design and distribute scholarships. Multi-state SGOs help address these infrastructure shortfalls by immediately allowing established organizations with scale to offer scholarships in states that opt in.

There is no regulatory advantage gained from preventing multi-state SGOs from providing scholarships in multiple states. From a state and taxpayer perspective, there are several advantages to allowing it. The presence of these SGOs will give governors and families more immediate options. The larger scale of multi-state SGOs allows them to operate with lower ratios of non-scholarship expenditures, enabling higher spending on scholarships. This is especially true if Treasury rules do not require such SGOs to establish an entity headquartered or physically located in each state.

Treasury Should Ensure that Donors Have the Option to Designate the State in Which Their Contribution Is Used.

While multi-state SGOs should be welcomed, they do raise questions about how such SGOs allocate contributions among states. DFI believes that a donor should be able to designate the state where their contribution should be used, and they must



be given the opportunity to indicate their preference. Donor intent is, to us, more important than SGO flexibility.

Treasury should recognize, however, that there are some practical limitations to donor designations. SGOs should be required to offer state designations, but they must be allowed to allocate contributions in the absence of a designation. First, many donors will not care which specific state's children benefit from their contributions, and receiving SGOs should therefore be allowed to allocate undesignated contributions as they see fit. Second, donors may prefer that their contributions are used in a given state, but that state has not yet elected to participate in the FSTC. In those cases, the SGO should also be able to allocate the contribution as it sees fit.

Multi-State SGOs Should Operate in a State and Comply with § 25F As If It Only Operated in that State.

DFI understands that Treasury may need to assess the compliance of multi-state SGOs regarding some key requirements on a state-by-state basis. Treasury is right to ask its questions about multi-state SGO compliance, because the last-minute addition in the statute of the state opt-in raises questions about whether the language in, for example, § 25F(d)(1) is meant to apply in the aggregate.

As Treasury sifts through its assessment options for each requirement, it should keep two points in mind. First, for several SGO requirements, the answer to Treasury was obvious, and so they were not included in Notice 2025-70—for example, compliance with tax-exempt status and prohibitions against co-mingling. Based on Treasury's apparent approach to State SGO lists, DFI assumes that those requirements will be verified by states and, when appropriate, evaluated on a state-by-state basis. This approach reflects an appropriate bias that most criteria should be evaluated on a state basis. There must be compelling reasons to allow an analysis in the aggregate.

Second, some of the law's requirements raise natural questions about whether SGOs should face consequences in other states if the requirement is violated in one



state. DFI believes that Treasury should evaluate the seriousness of a failure to meet specific criteria in a single state before making enforcement decisions. Only when the failure is egregious and could impact families or taxpayers should an SGO be removed from another State’s SGO list.

Finally, the state-versus-aggregate issues are usually of little importance to the most important stakeholders—children and families. But they could be of importance to the other stakeholders, especially states/governors, taxpayers, and SGOs. Often, an SGO’s desire for administrative flexibility will clash with a governor’s expectations and goals when including the SGO on the State list. Treasury will ultimately need to weigh and balance those interests.

For the issues that Treasury has specifically asked about, DFI offers the following:

- **Ten Scholarships/At least Two Schools:** When governors voluntarily elect to participate in the FSTC, and when donors designate a state for their contributions, they would have reasonable expectations under the statute that the SGO will meet the “10 scholarships” requirement. For governors in particular, they are being asked verify that an SGO meets this criterion before it can be included in the State SGO list, implying that SGOs are expected to provide at least ten scholarships inside the state. These interests seem to eclipse the interest of some SGOs to be evaluated in the aggregate. However, the consequences of failing to meet this criterion are not that serious, and Congress likely included the provision solely to ensure that SGOs had minimal scale. So, if for some reason an SGO failed to meet the minimum standard in one state, it should not automatically lose its place on another state’s SGO list.
- **90 Percent of Income:** Governors, families, and donors who designate the state would have a reasonable expectation that 90 percent of FSTC contributions are spent on scholarships in the state. (This conclusion changes, however, if Treasury determines that all contributions to an SGO—even those funds earmarked for state-based or privately funded programs—must be spent on FSTC-qualified scholarships.) Again, governors are being



asked to verify that the SGO meets this criterion before adding the SGO to the State list. So, again, DFI concludes that governor and donor interests outweigh those of SGOs that would prefer to be evaluated in the aggregate. Because failure to meet this expenditure threshold is potentially serious, Treasury should consider procedures for removing from other State SGO lists an SGO that fails to comply with this requirement in one state. DFI would, however, point out that some violations might be minor and essentially inconsequential, so Treasury should consider when removal from other State SGO lists is warranted. It might, for example, set an 80-percent threshold before starting such an enforcement action.

- **Prohibitions Against Scholarships Covering Disqualified Expenses:** On one hand, Congress likely meant this to be a blanket prohibition, so misappropriation of scholarship funds should not be tolerated. Congress was likely concerned in this provision with scholarship funds being used fraudulently for non-education expenses. If the SGO is complicit in the fraudulent use of taxpayer contributions in one state, then that SGO should face consequences in other states. On the other hand, an SGO would likely fail this criterion only inadvertently due to misinterpretation of the regulations regarding qualified expenses, which are likely to be quite complicated. The statute refers to a very broad list of educational expenses, and it could be difficult to imagine which educational expenses would not be encompassed under it. So, Treasury and states should be prepared to extend grace when an SGO's scholarships are used for disqualified expenses by mistake and unrelated to fraud.
- **Prioritization of Scholarships:** Governors and donors have a reasonable expectation that SGOs in the state will in the future prioritize scholarship distribution as described in statute. For a donor, it would take some mental gymnastics to imagine that funds the individual designates for students in one state might be redirected to another state to satisfy this requirement on an aggregate basis. DFI is currently unaware of any stakeholders who think scholarship prioritization should be allowed in the aggregate, but we



concede that some SGOs may prefer it for administrative convenience. That would, of course, mean that the SGO would have to be given a standing waiver so that it could allocate funds designated in one state to scholarships in another—a real possibility if the SGO does not have enough funds to prioritize scholarships in the aggregate. DFI is uncomfortable with providing SGOs with a mechanism and perhaps an incentive to thwart the interests of governors and donors to have those funds spent in the designated state. So, we recommend that Treasury require prioritization on a state-by-state basis. As for consequences, some failures to prioritize appropriately in a given state could reflect systemic failure, and Treasury should retain authority to remove the SGO from other State lists.

- **Prohibitions Against Earmarking Contributions for a Particular Student:** Congress meant this as a blanket prohibition, and if it happens, it would be the result of intentional action. It would require both the donor and the SGO to conspire to violate the prohibition. So, if Treasury or a state uncovers earmarking, the SGO should face serious consequences, perhaps the least of which would be removal from other States' SGO lists.
- **Verification of Family Income:** Congress meant this to be a blanket rule to ensure that only eligible students receive scholarships. If a multi-state SGO uses the same system in every state for income verification, there might be an opportunity for aggregate analysis. However, the capacity and systems for doing this analysis would need to be developed in parallel to, and on top of, the state-by-state analysis for all other SGOs. Treasury might instead save resources and rely on the state-level systems.
- **Prohibitions Against Self-Dealing:** Without understanding how Treasury is going to define “disqualified person,” using a part of the Internal Revenue Code that is designed for private foundations, which face very different self-dealing issues, DFI is hesitant to weigh in on this issue. But Congress clearly wanted to prohibit self-dealing with this provision—meaning that it did not want donors to compel an organization to provide a scholarship to their own family members. In that sense, it can be evaluated the same as the broader



prohibition against earmarking. If Treasury or a state uncovers intentional self-dealing by a multi-state SGO, that SGO should face serious consequences, including removal from other States' SGO lists.

E. Voluntary Elections to Participate in FSTC

Treasury Should Allow States to Voluntarily Elect to Participate in § 25F Prior to Submitting State SGO Lists.

DFI agrees with Treasury that the best reading of § 25F directs Treasury to offer states the opportunity to elect to participate in the FSTC prior to requiring them to submit a State SGO list. The statute explicitly identifies and distinguishes two actions— “voluntarily elect[ing] to participate” and submitting a list of SGOs located in the state.⁴⁶

However, we believe Treasury should make the consequences of this decision less abstract in its guidance and regulations. In concrete terms, a governor who decides not to voluntarily opt-in is proactively deciding to deprive children in his or her state of receiving scholarships funded by charitable contributions (that is, not from state and local tax revenues). Those scholarships can be used for a variety of purposes, including for tutoring and other supplemental services and, if a family chooses, for private-school tuition. The consequence of not opting in also puts a state at an educational disadvantage, because taxpayers residing in the state would still be allowed to receive a § 25F credit by donating to SGOs operating in other states. We understand Treasury's bloodless description but believe it fails to convey the true consequences of not voluntarily electing to participate.

As a matter of putting the program into action, it is eminently sensible that Treasury allow a state first to confirm to the Secretary that it will participate in the program prior to determining which SGOs located in the state plan to meet the requirements of § 25F in providing scholarships for qualified expenses. As a

⁴⁶ *Supra* note 8.



practical matter, these SGOs will have no reason to prepare to meet such requirements or even determine whether they are capable of doing so until they know that a state within which they are located plans to participate in the program. Before they can distribute scholarships under § 25F, SGOs will need significant time to establish the infrastructure to support FSTC scholarships, attract donors, identify scholarship recipients, and design their programs in a way that best fits the states and communities in which they operate.

DFI thus welcomes Treasury’s issuance of Rev. Proc. 2026-6, which allows governors or other authorized representatives to make an advance election to participate in the FSTC and contemplates that such states will later perfect their advance elections by submitting lists of SGOs that will provide K-12 scholarships with FSTC donations.

Treasury Should Designate a Date in 2027, not 2026, as the Final Day on Which States May Elect to Participate in the FSTC Program for the 2027 Calendar Year.

Notice 2025-70 reveals that Treasury and the IRS anticipate requiring “each State electing to participate under § 25F for the 2027 calendar year to submit [its State SGO list] to the IRS, by a specified date before January 1, 2027.” Meanwhile, the statute indicates that the final deadline for submission of the State SGO list every calendar year should be “not later than January 1,” or with respect to 2027, “as early as practicable.”⁴⁷

The statutory language has two separate implications for Treasury. As Treasury already understands based on Notice 2025-70, Congress has obliged it to allow the submission of State SGO lists as soon as possible in 2026. DFI, governors, and SGOs appreciate that Treasury is working to set a deadline that will maximize the chances for FSTC-funded scholarship programs to be successful in 2027. However, the plain language of the bill also means that Treasury should set a deadline after

⁴⁷ 26 U.S.C. § 25F(g)(1)(A).



January 1, 2027, for states where it is not “practicable” to opt in or provide a State SGO list in time to meet the yet-to-be-determined IRS deadline.

Because the statute specifically contemplates that Treasury may extend the period in which a state may elect to participate and submit its SGO list beyond January 1 for 2027, Treasury should strongly consider exercising its statutory-granted authority to determine a practicable date that allows states to complete their process at any time during 2027. It might also set a date mid-year, so that SGOs still have time to raise funds and distribute scholarships before December 31. Such an extension would give SGOs more time to determine whether they can generate sufficient donor and student interest in scholarships that comply with the § 25F requirements, and it would grant to states more time to identify SGOs. To the extent Treasury plans to impose substantial verification requirements on the states, it would also allow the states to carry out such verification of SGOs.

We acknowledge that one reason (among many) for states not being able to meet a deadline in 2026 is that some will be holding elections. Newly elected governors might be more open to opting to take advantage of the charitable FSTC donations than sitting governors, and Treasury should not interfere with the will of a state’s voters through the misapplication of deadlines that are not statutory.

Treasury Should Not Set a Single Deadline for the Submission of State SGO Lists and Instead Accept Preliminary and Amended SGO Lists on a Rolling Basis.

The FSTC-funded scholarship programs will not be static, and new SGOs will seek to join State SGO lists each year. To ensure that those future SGOs also have time to ramp up and launch successfully, Treasury should not impose a single, static deadline that puts all SGOs, especially new SGOs, at a disadvantage.

In addition to K-12 scholarship programs and SGOs being dynamic, the state policy and political environments for them vary remarkably across states. Such complex dynamics should encourage Treasury to provide maximum flexibility to governors as they compile State lists. By providing early and sequential opportunities for



states to submit State SGO lists, governors could then signal to included SGOs that they will be eligible to provide scholarships in the subsequent calendar year. Governors could add SGOs to the State list as their compliance is verified right up until a final deadline, giving new SGOs on the list a chance to ramp up activities for the following year and compete for resources on a level field with other SGOs. We are, in essence, suggesting that Treasury abandon its interest in regulatory simplicity for a system that prioritizes the interests of the students and families who will benefit from K-12 scholarship programs.

After 2027, the SGO list deadline should be on January 1 of the relevant year. (For 2027, the deadline should be later, as required by statute, discussed above.) This approach would maximize the opportunities for families to secure K-12 scholarships for their children. To accommodate Treasury’s desire to streamline the submission process for administrative convenience, Treasury might set monthly or even quarterly submission dates starting July 1. Over time, the IRS could develop a real-time portal where governors can add SGOs as they are verified until January 1. Nothing in this rolling approach is precluded or discouraged in the statute.

Treasury Should Treat States’ Election to Participate in the FSTC as Final and Irrevocable for an Applicable Calendar Year.

DFI also supports Treasury’s tentative determination that, once a state elects to participate in the FSTC, the state has thereby finalized its election with regard to the relevant calendar year—including for the first year of the program beginning on January 1, 2027. Once a state voluntarily elects to participate in a given year, it cannot withdraw its election.

Treasury should treat a state’s election to participate in the FSTC as the final decision with respect to the applicable calendar year.⁴⁸ This principle should apply

⁴⁸ For that matter, Treasury should ignore any state’s public announcements *not* to participate, as this is not authorized by § 25F.



to the future, too, as states will have the opportunity to add new SGOs each calendar year. Families, taxpayers, and SGOs deserve stability once an SGO is incorporated into the State SGO list.

§ 25F includes no mention of a state’s ability to “opt out” of the FSTC after it has elected to participate—and rightly so, due to the unpredictability and confusion such reversals could cause for students and families. For SGOs and families that may view participation in the program as risky when a new governor could suddenly nullify a previous state decision, this approach would be reassuring. We do not believe that Congress intended to create anxiety for the implementers or the beneficiaries of K-12 scholarship programs.

F. Requirements for SGOs, including 90 Percent Rule and Self-Dealing Prohibition

Treasury Should Reiterate that Contributions Under § 25F Must Be Distributed as K-12 Scholarships to Eligible Students’ Families and Cannot Be Distributed Directly to School Districts, Schools, or Other Educational Providers.

With § 25F, Congress established a K-12 scholarship program, funded by charitable contributions, to expand educational opportunities and improve student outcomes. It did not intend merely to create a fundraising opportunity for private, public, and charter schools. The K-12 scholarship concept is embedded throughout § 25F, including subsection (c)(3), where the statute specifically says that SGOs must “use the [FSTC] contribution to fund scholarships for eligible students.”

Several public and private institutions are considering becoming SGOs to take advantage of the fundraising opportunity related to § 25F. Many of these are experienced at raising funds for K-12 programs, but most of them are more accustomed to raising funds for systems or schools, not parents and students. DFI has happily fielded requests for information about the FSTC from many of these institutions, and we genuinely hope all of them will be distributing scholarships in 2027. DFI has, however, noticed that the basic concept that funds must be



distributed as scholarships occasionally escapes them. They talk as if § 25F will enable them to raise money for some terrific programs, rather than to empower families with more education freedom.

Because DFI and Treasury cannot know how many potential SGOs are laboring under this misconception, Treasury should use rulemaking to clarify for SGOs that they are obliged under § 25F to bundle their FSTC contributions and then distribute them in the form of K-12 scholarships. The recipient families, not the SGO, then direct their scholarship's funds where they so choose. For audit and control reasons, SGOs might distribute scholarship funds as directed by families using notional digital wallets and other electronic payment systems, but they need to document that the family, not the SGO, has decided which school or education provider should receive payment.

Treasury might also issue rules preventing SGOs from unreasonably limiting the list of educational providers from which parents can choose. For example, if tutoring scholarships are limited in use only to credentialed teachers working full-time at one or two local schools (public, charter, or private), the scholarship would not really create many educational opportunities. Such an approach would violate the purpose and spirit of the law, but it admittedly is not addressed, much less prohibited, in the law. Congress apparently is relying on donors to starve such bad behavior by contributing to other SGOs. Treasury may proactively choose to get ahead of such market failures.

One area where Treasury should definitely preempt the misuse of FSTC contributions is through the careful description of eligible education expenses. Treasury has not requested input on this important issue yet, most likely because regulations around it are not as urgent as the ones around State SGO lists and SGO requirements. DFI will provide a more detailed response when asked, but, in summary, DFI will recommend a sector-by-sector approach to exclude nonsensical items. Traditional public schools, for example, do not charge tuition, except in rare cases of interdistrict transfers. So, they should not be allowed to contrive a tuition system in order to supplant their existing per-pupil revenues.



Treasury Should Clarify that the Prohibition Against Earmarking Applies to All Donors.

In § 25F(d)(1)(E), Congress has provided that SGOs are not allowed to “earmark or set aside contributions for scholarships on behalf of any particular student.” Obviously, the SGO would most likely be motivated to earmark funds for a particular student at the behest of a donor. DFI therefore recommends that Treasury clarify that donors specifically may not compel the SGO to earmark funds for a particular student because it would be a form of self-dealing.

Also, on a practical level, the act of giving a scholarship to a particular student could be construed incorrectly as setting aside or earmarking funds for that particular student. Treasury should make clear that the distribution of K-12 scholarships to eligible students does not constitute earmarking.

Treasury Should Allow SGOs to Use a Family’s Qualification to Receive Federal Benefits as a Proxy for Satisfying Income Means Testing.

In § 25F(d)(1)(F), Congress obliges SGOs to verify “the annual household income and family size of eligible students.” There are several hidden problems in this phrase that could be resolved through rulemaking.

First, and most importantly, income verification can be costly and burdensome, and the limitation on non-scholarship expenditures is meaningful. Treasury should design its income-verification requirements to allow SGOs, especially new and small SGOs, to pursue less-expensive but reliable income-verification options. A few strong vendors are already in place to help SGOs confidently assess a family’s income, and they will be essential to fulfilling this requirement for SGOs. (DFI hopes that existing SGOs, private schools, and these vendors themselves will share their actual charges for income verification, but DFI can report that for program budgeting, new programs commonly use a figure of around \$50 per family—a significant portion of the \$170 from each donation that can be used for non-scholarship costs.)



One option is to let SGOs rely on documentation showing that a family qualifies for certain federal benefits as proof that the student’s household income falls well below 300 percent of AMI. These federal benefit programs might include the free or reduced-price lunch (“FRL”) program, the Supplemental Nutrition Assistance Program (“SNAP”), the Child Healthcare Insurance Program (“CHIP”), and Medicaid, among others. Many of these families do not file federal income tax returns, and without this option, income verification was already going to be difficult. So, this approach has the added benefit of making sure that lower-income families will be able to take advantage of FSTC-funded scholarships.

Second, a student’s family size is not relevant in the AMI calculation. When tax transcripts are used for income verification, the information is readily available. Otherwise, it may not be. DFI would encourage Treasury to waive the need for household-size verification if it is burdensome.

Finally, the law states in (c)(2)(A) that an eligible student must be “a member of a household with an income [less than 300 percent of AMI *for the calendar year prior to the date of the application*]” (emphasis added). In practical terms, this could mean that an applicant in 2027 would have to prove their income in 2026, often long before they have filed taxes. If Treasury could allow prior-year income verification (as it does for federal student aid, for example), it would reduce the cost, burdens, and delays in verifying income. If this is not possible without a statutory change, DFI requests the Treasury notify the appropriate congressional committees of the issue.

Treasury Should Interpret the Statutory Requirement that 90 Percent of an SGO’s Income Must Be Spent on Scholarships as Applying Only to Income from Donations Under § 25F.

§ 25F(d)(1)(B) limits eligibility to receive FSTC contributions to SGOs that spend “not less than 90 percent of the income of the organization on scholarships for



eligible students.”⁴⁹ In Notice 2025-70, Treasury and the IRS “anticipate that the forthcoming proposed regulations would provide that the income of the organization includes all income of the organization, including unrelated business income, and is not limited to qualified contributions segregated in the separate account(s).”⁵⁰ The notice goes on to request public comments on whether “this interpretation of income pose[s] practical challenges for SGOs,” as well as “what alternative interpretation would be allowed under the statute, and why . . . any alternative interpretation [would] be a superior reading of the statute.”⁵¹

DFI welcomes the opportunity Treasury has offered to provide an alternative interpretation of the “90 percent” requirement that better aligns with the context and purpose of the statute’s provisions. If Treasury proceeds using the approach outlined in Notice 2025-70, the consequence will be that many, if not all, existing SGOs will not participate in the FSTC because compliance is unworkable. If people associated with existing SGOs wish to help students through the FSTC, they (along with non-SGO 501(c)(3) organizations) will have to consider the riskier path of starting up new 501(c)(3) organizations dedicated wholly to raising FSTC contributions and distributing FSTC-qualified scholarships to FSTC-eligible students.

Treasury has credibly read the “90 percent” requirement in isolation to envelop the total revenue of an organization wishing to raise scholarship funds under § 25F. However, the “90 percent” requirement should not be read in isolation. Instead, Treasury should take into account the surrounding context of the statute, which is focused entirely on how to manage revenue under the FSTC. It should not assume that Congress was trying to cleverly capture more revenue for FSTC-compliant scholarships, especially when some of that other revenue was

⁴⁹ 26 U.S.C. § 25F(d)(1)(B).

⁵⁰ Notice 2025-70, *supra* note 1, at 13–14.

⁵¹ *Id.* at 14.



specifically intended for other charitable uses, including state-based scholarship programs with different eligibility rules.

DFI respectfully argues that this contextual approach is the superior way to interpret this provision. In the context of § 25F, where the entire section only addresses the FSTC, the provision should be read as “not less than 90 percent of the income of the organization [from qualified FSTC contributions] on scholarships for eligible students.”

The law clearly contemplates that an SGO will treat each “qualified contribution” separately from any other income it receives.⁵² Reinforcing this point, the statute requires that participating SGOs prevent “the co-mingling of qualified contributions with other amounts by maintaining one or more separate accounts exclusively for qualified contributions.”⁵³ The law thus explicitly contemplates that eligible SGOs could solicit donations and engage in other activities outside of participating in the FSTC. Requiring SGOs to spend at least 90 percent of their other income on FSTC-eligible scholarships would practically deny those SGOs of any ability to solicit donations or operate any programs outside of the FSTC and thus would rob the “co-mingling” provision of any practical meaning.

In addition to requiring that “not less than 90 percent of the income of the organization” be spent on FSTC-compliant scholarships on eligible students, the law provides that no eligible SGO may “provide scholarships for any expenses other than qualified elementary or secondary education expenses.”⁵⁴ Thus, the “90 percent” requirement would mean that an FSTC-participating SGO must apply this eligible-expenses requirement to *all* of its scholarships. This would simply be unworkable for current SGOs, whether they are funded through state-based tax

⁵² “Qualified Contributions” are defined in § 25F(c)(3) as “a charitable contribution of cash to [an SGO] that uses the contribution to fund scholarships for eligible students solely within the State in which the organization is listed pursuant to” the law.

⁵³ 26 U.S.C. § 25F(c)(5)(B).

⁵⁴ *Id.* § 25F(d)(1)(C).



credits or privately. SGOs that manage state-based tax-credit scholarships receive contributions with state-based restrictions, none of which align perfectly with the federal requirements. SGOs that receive private, tax-exempt donations also have different scholarship designs. Barring a flawed read of the “90 percent” requirement, these groups would, without co-mingling funds, continue their programs, partly out of respect for donor intent. For what possible reason would Congress exclude SGOs that presently offer scholarships covering expenses other than those contemplated in § 25F? Having provided that eligible SGOs cannot co-mingle FSTC donations with funds for other scholarship programs or activities, what interest could Congress have in limiting other scholarships?

The statute also requires that participating SGOs provide scholarships only to eligible students, defined as those who are eligible to enroll in elementary and secondary schools and whose household income is below 300 percent of AMI.⁵⁵ Consistent with state laws governing state-based scholarship programs, many SGOs provide scholarships to Pre-K students or all students universally, including for students with disabilities that have household incomes above the FSTC threshold. The proposed approach in Notice 2025-70 to the “90 percent” requirement implies absurdly that Congress would interfere with such state programs by encouraging SGOs to cut off such students from their state-based scholarships.

A far-more-reasonable (and correct) reading of these “qualified expenses” and “eligible student” requirements is that scholarships provided pursuant to the FSTC may only cover “qualified” expenses for eligible students as defined in the statute. SGOs may use non-FSTC revenue to cover any other expenses as they see fit. For consistency, then, Treasury must interpret the “90 percent” requirement in the same manner: SGOs participating in the FSTC must spend at least 90 percent of their income received from donations under the FSTC on scholarships for eligible students. The statute does not touch the remainder of each SGO’s income—which,

⁵⁵ *Id.* § 25F(b)(2).



as demanded in the statute, is expressly separated from funds raised pursuant to § 25F.

DFI also encourages Treasury to take note of the use of the term “income” in the “90 percent” provision. Normally, IRS rules and forms only address the “revenue” or “contributions” of 501(c)(3) organizations and does not mention “income” except in the context of unrelated business income. By using the colloquial term “income” and then not defining it for the FSTC, Congress has opened the door to having Treasury define the term in a matter consistent with the statute’s intent.

DFI strongly believes that the congressional goal of expanding educational opportunity through the FSTC will be totally frustrated if Treasury reads the “income” language in § 25F(d)(1)(B) to exclude SGOs that engage in state-based and privately funded educational freedom and other programs. It is easy to see why Congress would wish to bolster existing SGOs and encourage their participation in the FSTC—because these SGOs are primed to offer FSTC-compliant scholarships at scale quickly and efficiently. In contrast, it is impossible to see why Congress would want to exclude existing SGOs from FSTC and require organizations to set up entirely new infrastructure to carry out its goal of expanding educational freedom. Such an interpretation would only lead to delays, financial barriers for entities that wish to participate in the program, and burdens on the IRS in the form of the recognition of sundry new 501(c)(3) tax-exempt organizations required to carry out this interpretation of the rule.

The costs of establishing, developing, and maintaining 501(c)(3)s are not trivial, and they would be funded through the 10 percent of non-scholarship costs allowed under the 90 percent requirement. To impose such costs when existing SGOs could instead manage their FSTC program using segregated accounts, Treasury should first conclude that it was Congress’s intent to impose such non-scholarship cost on SGOs.

DFI recommends that Treasury interpret this “90 percent” threshold in context, so that current SGOs will participate, and as many families as possible can benefit from scholarships. Thus, DFI respectfully asks that Treasury resolve this statutory



ambiguity in a way that fulfills Congress’s goals and accords with the context of the statute. The “90 percent” requirement should apply only to income of an SGO from donations received pursuant to the FSTC.

Treasury Should Create a Clear Demarcation Between Scholarship and Non-Scholarship Costs.

In describing the “90 percent” requirement, § 25F(d)(1)(B) requires spending on “scholarships for eligible students.” DFI believes this undefined phrase opens the possibility for accounting gamesmanship. Are the expenses required to vet students for eligibility included in the 90 percent? Are expenses required to raise donations included? If an SGO uses a digital wallet or creates a marketplace for eligible educational expenses, would those costs be included? In fact, given that every expense could possibly be tied to providing scholarships to eligible students, what, if anything, should not be included in the 90 percent?

DFI recommends that only funds that are distributed to families as scholarships be included in the 90 percent. This is a harsh standard, but it would maximize the amounts being received by families, and it is likely what Congress intended with this last-minute change to the legislation. However, Treasury could reasonably consider establishing clear categories of expenses that might be included, especially those that are explicitly referenced in statute, such as verification of student eligibility and meeting IRS reporting and documentation requirements.

Treasury Should Calculate SGO Income for the Purposes of the “90 Percent” Rule on a Rolling, Three-Year Basis.

In Notice 2025-70, Treasury and the IRS requests public comment on whether “forthcoming proposed regulations [should] address potential fluctuations in income and expenses, such as potential start-up costs to the organization in its first



year of operation or the smoothing of this calculation over a certain number of years.”⁵⁶

DFI recommends that Treasury regulations calculate the income of each participating SGO (from donations received pursuant to the FSTC, as described above) on a rolling, three-year average. Such an average will take into account the startup costs for SGOs as they ramp up and prepare to fundraise for, design, and distribute scholarships and verify recipients’ income. It would also accommodate the fact that donations tend to occur toward the end of each year, whereas SGOs typically grant scholarships in the spring of the following year. A rolling, three-year average would help SGOs comply with the rule by allowing them to consider the previous year’s donations in granting those scholarships and not requiring them to base their funding of scholarships on an uncertain prediction of what they may receive later in the calendar year.

Treasury Regulations Should Allow SGOs to Grant Scholarships Under the FSTC Program to Students Who Either Reside in or Attend School in Their Covered States.

With respect to the eligibility of students to receive scholarships under the FSTC, § 25F only requires that the student’s household has an income not greater than 300 percent of AMI and that the student “is eligible to enroll in a public elementary or secondary school.”⁵⁷ The law also limits contributions to those that “fund scholarships for eligible students solely within the State in which the organization is listed” pursuant to the law.⁵⁸

DFI recommends that Treasury regulations interpret these broadly worded provisions—in particular the provision limiting scholarships only to students “within the State”—to permit SGOs located in a Covered State to use donations

⁵⁶ Notice 2025-70, *supra* note 1, at 14.

⁵⁷ 26 U.S.C. § 25F(c)(2).

⁵⁸ *Id.* § 25F(c)(3).



under the FSTC to fund scholarships both for students who reside in that Covered State and for students who attend school in that Covered State.

This interpretation will be particularly important to families who live near state borders and could easily take advantage of educational opportunities in the nearby state. As conceived, this approach means that the only students who could not receive FSTC-funded scholarships are those who both reside in and attend school in states that have not opted to participate in FSTC. Students that reside in and attend a school in a Covered State could benefit from scholarships. Any students who live in a Covered State could receive a scholarship from an SGO on the State list, even if they attend a school in an uncovered state. Finally, any students whose permanent residence is in an uncovered state could receive a scholarship from an SGO on a Covered State's SGO list if the student attends a school in the Covered State, including military and boarding schools. The language "within the State" is sufficiently broad to bear the qualification of students living or attending school in a Covered State, and interpreting it in this way would correspond with Congress's purpose of establishing a far-reaching school-choice program.

Such an interpretation would also prevent complications that might arise with regard to divvying up educational expenses by state in the event a student attends an out-of-state elementary or secondary school. Would tuition or room and board paid directly to the school in a Covered State be treated differently from, say, supplies parents may purchase for their children in their non-Covered State of residence? Treasury would avoid such complications by recognizing simply that "within the State" applies both to residence in a Covered State or attendance at an institution in a Covered State.

Treasury Regulations Should Define "Disqualified Persons" as Individuals Who Have Donated at Least \$5,000 to the SGO If the Donation Totals More than 2 Percent of the SGO's Revenue.

In the interest of preventing self-dealing, § 25F prohibits participating SGOs from granting scholarships to "any disqualified person," which it provides "shall be determined pursuant to rules similar to" those rules under a federal law relating



to “substantial contributors” to private foundations.⁵⁹ In Notice 2025-70, Treasury and the IRS acknowledge that those rules define a “substantial contributor” to include “any person that made contributions during the taxable year in the aggregate of at least \$5,000, if that amount is more than 2 percent of the total contributions the foundation or organization received from its inception through the end of the taxable year in which the person’s contributions were received.”⁶⁰ However, Treasury and the IRS state that they are considering whether to modify that rule for the purpose of “disqualified persons” under the FSTC to recognize that this term applies to “any person who contributed an aggregate amount of more than 2 percent of the total contributions received by the SGO from its inception through the end of the taxable year in which that person’s contributions were received”—regardless of whether those contributions amounted to more than \$5,000 during the taxable year in question.⁶¹

DFI respectfully recommends that Treasury and the IRS retain the \$5,000 threshold from the “substantial contributors” definition. Practically speaking, if Treasury mandated a 2-percent cap, and an SGO received fewer than 51 donations in a year, any donor that contributed the \$1,700 maximum taxable-year FSTC donation to that SGO would disqualify his or her child from receiving a scholarship pursuant to the program, to the particular detriment of students who could be served by small SGOs awarding scholarships to families in their communities. DFI thus urges Treasury to hew closely to the existing “substantial contributor” rules to avoid disadvantaging small SGOs and their prospective scholarship recipients.

Treasury Should Generally Consider SGO Managers as Analogous to Foundation Managers under § 4946, with Exceptions.

DFI commends Treasury for understanding that the section of the Code addressing self-dealing at private foundations, § 4946, is not fully analogous to what is needed

⁵⁹ *Id.* § 25F(d)(2); *id.* § 4946.

⁶⁰ Notice 2025-70, *supra* note 1, at 15.

⁶¹ *Id.* at 16.



for SGOs. Treasury should consider many of the people considered “disqualified persons” by § 4946 as irrelevant in the context of SGOs, and it appears it will. It would be dubious to argue, for example, that Congress meant to prevent the children or grandchildren of every elected and career government official from ever receiving an FSTC-funded scholarship.

Treasury has asked how to properly define when members of a “SGO’s selection committee” should be considered a “disqualified person.” Although most SGOs do not have a “selection committee” per se, the spirit of the question seems to probe whether certain officials or board members of the SGO could profit personally by ensuring that certain applicants receive a scholarship. To protect the FSTC from accusations of self-dealing and fraud, DFI encourages Treasury to adopt a blanket prohibition against the receipt of FSTC-funded scholarships by the lineal descendants of board members, SGO staff, or individual consultants who exercise authority over the selection of scholarship recipients. DFI recognizes that this is overkill and would disqualify many children from receiving scholarships, so DFI also recommends that the descendants of board members, SGO staff, or independent consultants would not be disqualified if the selection process is “blind” and designed to protect against influence by otherwise disqualified persons.

G. Recordkeeping and Documentation

Treasury Should Only Require SGOs to Provide to Each Donor a Receipt of a Contribution Made Pursuant to the FSTC Program Acknowledging that the Donor Received No Value for the Donation.

In Notice 2025-70, Treasury and the IRS state that they “anticipate issuing guidance that would require organizations seeking to satisfy the requirements to be an SGO to report certain information to the IRS and to retain certain records to ensure that the requirements of § 25F are met,” potentially including the annual filing of an IRS form containing information on qualified contributions, to include donor taxpayer identification numbers, and information on every recipient of a



scholarship provided under the FSTC.⁶² The notice seeks public comment on how “reporting and recordkeeping requirements [should] be designed to balance the IRS’s need for information for Federal income tax administration purposes with the burden imposed on the reporting organizations.”⁶³

DFI respectfully urges Treasury and the IRS not to establish new, burdensome annual filing requirements obligating each SGO to collect and submit sensitive information regarding donors that could discourage donors and SGOs from participating in the FSTC, contrary to Congress’s intent to scale up school-choice options across the country.⁶⁴ Instead, Treasury should start by applying to the FSTC the same reporting rules governing charitable donations for the purpose of including deductions in one’s annual tax return. Upon donating to an SGO for the purpose of funding a scholarship pursuant to § 25F, a donor should receive from the SGO a written statement acknowledging the receipt of the contribution and confirming that the donor received nothing of value in return for that donation.

That documentation should be enhanced to describe the peculiarities of the FSTC. The SGO must affirm that it is eligible to receive FSTC contributions under § 25F. The acknowledgement of contribution would explain that up to \$1,700 (\$3,400 for married couples) of cash (*i.e.*, non-security) donations could be applied as a credit against federal income tax in the year it was contributed. It would note that the tax-credited amount may not also be used as a charitable tax deduction and that any amounts above the donor’s tax liability for the year can either be used as a tax deduction or carried over for up to five years to be applied against future tax liabilities. (Neither the SGO nor the IRS should presume which option the taxpayer would choose, but the SGO should give the donor the opportunity to express his or her preference, as this would affect the SGO’s 90-percent-of-income calculation.) It

⁶² *Id.* at 17–18.

⁶³ *Id.* at 18.

⁶⁴ *See supra* note 24.



would be helpful if the IRS provided boilerplate language covering all of these points to SGOs.

In states that offer tax credits for state-based K-12 scholarship programs, the acknowledgement of contribution will need to explain the interactions between the state and federal credits.⁶⁵ For states that have 100-percent credits, the documentation would explain that the donation can be used for either the state program or the FSTC, but not both. In 100-percent tax-credit states, donors would need to provide two separate donations if they want to receive both a state and federal credit. The SGO should be allowed to ascertain donor intention as to which credit will be taken, to make sure FSTC donations are captured in a segregated account. In partial-credit states, the SGO needs to determine how much of a contribution should be allocated to each. For example, if the state provides a 65-percent credit against state taxes for charitable contributions to its scholarship program, an individual donor who contributes \$4,000 would receive a \$2,600 credit ($\$4,000 \times 65\%$) against state taxes and a \$1,400 credit ($\$4,000 - \$2,600 = \$1,400$) against federal income tax. The \$300 balance could be used as a charitable tax deduction. To receive the full federal credit, individual donors with a 65-percent credit would need to make a contribution of \$4,858 or more. For example, someone making a \$10,000 SGO contribution could receive a \$6,500 credit against state taxes, a \$1,700 against federal income tax, and a charitable deduction for the balance of \$1,800.

This documentation procedure does nothing to preclude Treasury from requiring SGOs to keep on hand information about how it is complying with the requirements of § 25F, which they can provide to Treasury upon request, but it rightly would steer clear of requiring SGOs to collect and report to the IRS sensitive information from donors that go well beyond the IRS's needs in overseeing SGO compliance with the requirements of § 25F.

⁶⁵ 26 U.S.C. § 25F(a)(2).



Such an approach would place the least burden on the SGO, and the SGO would still provide the needed documentation should the IRS ever audit the donor or the SGO. As a rule, SGOs should not be burdened with the cost of developing systems to collect, protect, and transmit such sensitive personally identifiable information (“SPII”) as social security numbers, and such a requirement could have a chilling effect on donors for making a charitable contribution.

DFI projects that the FSTC will generate billions of dollars for K-12 scholarship programs, and we respect Treasury’s obligation to prevent or uncover fraudulent or abusive use of these funds. Because of this, it is worth examining where the FSTC is most vulnerable to fraud and abuse. The primary issues do not involve donors, because tax filers can ultimately take only one scholarship tax credit in their tax filings. It would be confusing to SGOs if a donor made several \$1,700 donations to various SGOs (and it would certainly mess up their 90-percent-of-income calculations), but donors would not be able to get credits above the allowed amounts. Other sources of fraud and abuse—such as earmarking for students and self-dealing—are dealt with separately in statute and will be addressed by proposed regulations.

Nor are SGOs a concern that warrants the imposition of substantial and costly additional administration burdens. The current regulatory regime for charitable, tax-exempt organizations works well, and there is no reason to think the ability to raise tax-credited funds in \$1,700 increments substantially changes the situation. However, Treasury might consider the elimination of the few waivers it gives to complete, for example, Form 990, if the 501(c)(3) is an SGO. (DFI recognizes that this may cause groups with religious waivers to start separate 501(c)(3) organizations specifically for the FSTC.) From DFI’s perspective, it would also be understandable if Treasury asked charitable organizations to reveal in their annual filings that they accept donations and distribute K-12 scholarships under § 25F.

That said, DFI wishes to point out that Treasury could reliably access data about donor contributions and SGO receipts if it were to encourage the use of payroll



deductions to facilitate contributions under § 25F. The IRS could develop a standardized system of forms and electronic transfers for payroll companies and employers to supplement the existing deductions, and that data could then be connected to other payroll data.

DFI encourages Treasury to recognize that the most serious threats of fraud and abuse related to the FSTC come not from taxpayer donors or SGOs, but rather from education providers and scholarship recipients. For example, in Florida's large K-12 scholarship program, we have already seen public school districts receive funding, perhaps inadvertently, when they leave students on their rolls, even though those students are being educated in private schools using tax-credit scholarships. It is not hard to imagine scenarios where individuals and schools seek duplicative, overlapping scholarships to provide (and double-fund) the same service. While we do not believe there will be substantial fraud and abuse, DFI recognizes that the best way to uncover it will be through student-level and school- and provider-level data. DFI's main point is that the IRS should rely on its current systems for addressing fraud and abuse, and not burden SGOs or donors with costly and intrusive burdens without a clear and realistic understanding of its costs and benefits. DFI looks forward to reviewing how these issues are addressed in the Notice of Proposed Rulemaking.

III. Conclusion

DFI appreciates this opportunity to comment on Treasury's and the IRS's anticipated regulations implementing the FSTC pursuant to § 25F and looks forward to participating further in the forthcoming rulemaking process.

Sincerely,

Jim Blew
Co-founder

Paul Zimmerman
Senior Counsel, Policy & Regulatory

- {Insert name, title, and contact information for the SGO’s point of contact with the state and the Internal Revenue Service (IRS)}
- {Insert the telephone number and email address of the SGO’s point of contact}
- {Insert the business address of the SGO}
- Check if SGO also intends to provide scholarships in other states under § 25F
- Has established one or more separate accounts exclusively for receiving qualified contributions under § 25F.³

I further affirm my understanding that {insert official name of SGO} must, during 2027, comply with the following provisions of § 25F. If {insert official name of SGO} fails to meet these requirements, it will be removed from the state’s list of qualified SGOs and could lose its tax-exempt status. Specifically, during the 2027 tax year, {insert official name of SGO}:

- Will spend 90 percent of its income on scholarships for qualified students.⁴
- Will prevent the co-mingling of qualified contributions under § 25F with other amounts.
- Will provide scholarships to 10 or more qualified students in the state at more than one school.⁵
- Will not provide scholarships for any expenses other than qualified education expenses.⁶
- Will not allow earmarking of contributions to specific students.

³ Segregated accounts are needed per state so that the SGO can comply with § 25F(c)(5)(B), which prohibits the co-mingling of these funds with other amounts.

⁴ The U.S. Department of the Treasury (Treasury) will define during rulemaking the ambiguous phrase in § 25F(d)(1)(B), “90 percent of the income of the organization on scholarships for eligible students.”

⁵ The assumption is that the term “school” is defined in state law. It is not defined in § 25F.

⁶ Treasury is expected to specifically define qualified educational expenses by school sector—that is, for example, based on whether the student attends a public, charter, private, micro-, home-, or hybrid school—referencing Internal Revenue Code (IRC) § 530(b)(3)(A).

- Will provide scholarships in the state only to students who are eligible to enroll in a public elementary or secondary school.
- Will verify that it provides scholarships only to students who meet the law’s income requirements.⁷
- Will not award a scholarship to a “disqualified person,” as defined by the U.S. Department of the Treasury.⁸
- Will follow all IRS reporting and recordkeeping requirements.⁹
- Will follow all IRS requirements regarding documentation provided to donors.

I affirm under penalty of perjury that the above statements are true:

{Insert full name, title (Chair of Board of Directors), and date}

Notarized Signature.

For an SGO that distributed scholarships under § 25F in 2027 and wishes to do so in 2028¹⁰:

As the chair of its board of directors, I, _____, affirm that {insert official name of SGO} is a scholarship granting organization that complies with the following requirements of Internal Revenue Code § 25F (the Federal “Tax Credit for Contributions of Individuals to Scholarship Granting Organizations”). Specifically, {insert official name of SGO}:

- Has registered to do business in the state and follows state law, including charitable solicitation registration. The SGO’s information for the record is:

⁷ § 25F(c)(2)(A) limits student eligibility to children in households with incomes “not greater than 300 percent of the area median gross income.” The law also requires SGOs to verify the family size of applicants in § 25F(d)(1)(F)(i).

⁸ Congress directed Treasury to define “disqualified person” pursuant to rules similar to the rules of IRC § 4946 (related to private foundations). In that process, IRS will likely define which “substantial contributors” will be ineligible for scholarships under § 25F.

⁹ These requirements will be defined by Treasury during rulemaking.

¹⁰ Or, in the future, before any tax year when the SGO has experience raising funds and distributing K-12 scholarships under § 25F.

- {Insert name, title, and contact information for the SGO's point of contact with the state and the IRS}
- {Insert the telephone number and email address of the SGO's point of contact}
- {Insert the business address of the SGO}
- Check if SGO also intends to provide scholarships in other states under § 25F.
- Has established one or more separate accounts exclusively for receiving qualified contributions under § 25F.

I further affirm that, during 2027, {insert official name of SGO} has complied with the provisions of § 25F. I understand that, during 2028, it must again comply with the following provisions of § 25F. If {insert official name of SGO} fails to meet these requirements, it will be removed from the state's list of qualified SGOs and could lose its tax-exempt status. Specifically, in 2028, {insert official name of SGO}:

- Will spend 90 percent of its income on scholarships for qualified students.
 - In 2027 (as of {insert date of affidavit}), {insert official name of SGO} has spent {X percent} of income on scholarships for qualified students.
- Will prevent and has prevented the co-mingling of qualified contributions under § 25F.
- Will provide scholarships to 10 or more qualified students in the state at more than one school.
 - In 2027 (as of {insert date of affidavit}), {insert official name of SGO} has provided {number} of scholarships for qualified students in the state at {number} of schools.

- Will prioritize previous scholarship recipients for scholarships in 2028, followed by siblings of those previous recipients.¹¹
- Will not provide and has not provided scholarships for any expenses other than qualified education expenses.
- Will not allow and has not allowed earmarking of contributions to specific students.
- Will provide and has provided scholarships in the state only to students who are eligible to enroll in a public elementary or secondary school.
- Will verify and has verified that it provides scholarships only to students who meet the law’s income requirements.
- Will not award and has not awarded a scholarship to a “disqualified person,” as defined by Treasury.
- Will follow and has followed all IRS reporting and recordkeeping requirements.
- Will follow and has followed all IRS requirements regarding documentation provided to donors.

I affirm under penalty of perjury that the above statements are true:

{Insert full name, title (Chair of Board of Directors), and date}

Notarized Signature.

¹¹ Note this provision, § 25F(d)(1)(D), is applicable only after first year of operation.