

PUBLIC COMMENT ON NOTICE 2025-70

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Submitted by: EducationSuperHighway

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Implementation of §25F Federal Tax Credit for Contributions to Scholarship Granting Organizations

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EXECUTIVE SUMMARY

EducationSuperHighway submits this comment in response to Notice 2025-70 regarding implementation of the federal tax credit for contributions to Scholarship Granting Organizations (SGOs) under §25F. As a national nonprofit with extensive experience administering multi-state educational access programs, including income verification, fraud prevention, and scholarship systems, we offer recommendations intended to strengthen program integrity, ensure equitable access for eligible students, and enable SGOs to operate in full compliance with federal requirements.

Our recommendations reflect both operational realities observed in state programs and our own scholarship program in Louisiana, as well as the need for consistent national standards in a federally subsidized benefit. Key proposals include:

1. Establishing Uniform National Certification and Oversight Standards

Treasury should adopt baseline standards that all participating States must meet, including independent audits, conflict-of-interest controls, verification systems, and risk-based review processes. Consistent national requirements will reduce regulatory arbitrage, prevent waste, fraud and abuse, and ensure that only SGOs with adequate governance and compliance capacity participate. Most critically, every SGO, regardless of size, should be required to conduct an annual independent audit.

2. Clarifying the Credit Amount for Married Couples Filing Jointly

Treasury should confirm that the \$1,700 limitation applies *per individual taxpayer*, permitting married couples filing jointly to claim up to \$3,400. This interpretation aligns with longstanding IRS treatment of identical statutory language in analogous provisions and avoids creating an unintended marriage penalty.

3. Supporting SGO Operational Feasibility Through Donations Not Eligible for a §25F Tax Credit

Treasury should affirm the full 10% administrative allowance inherent in §25F(d)(1)(B) and recognize that SGOs require adequate resources to carry out federally supervised compliance obligations and other program activities required to make §25F a success. To ensure that SGOs can build the systems necessary for income verification, fraud prevention, data security, donor reporting and donor and family outreach, particularly during startup phases, Treasury should either exclude donations over the allowable tax credit limit from the 90% rule or adopt a safe-harbor framework that excludes a fixed amount of non-tax-credit income from the 90% expenditure calculation. Application of the 90% rule should not begin until the program begins in 2027.

4. Allowing Scholarship Funds to Be Used Across Academic Years

Because academic calendars do not align with the tax year, SGOs should be permitted to use contributions received in one calendar year for scholarships awarded in the subsequent academic year. Cross-year flexibility is essential for predictable budgeting, timely award decisions, and alignment with real-world enrollment cycles.

5. Allowing Donors to Designate “No Preference” so They May Support an SGO’s Mission Without Choosing a Specific State for Donations to Multistate SGOs

Treasury should permit donors to select a “no preference” option when contributing to multistate SGOs, allowing them to support an organization’s mission or scholarship model even if they do not have a preference regarding the State in which their donation is used. SGOs would assign such contributions to a participating State before issuing the required donor acknowledgment. This flexibility reduces friction for donors, enables mission-aligned giving, and ensures that all contributions are properly attributed for compliance, reporting, and State-level scholarship tracking, while still maintaining rigorous oversight of scholarship disbursements.

6. Enabling Effective Multistate Operations with State-Level Compliance

Treasury should clarify rules governing multistate SGOs, including donor eligibility irrespective of residency, functional standards for determining when an organization is “located in” a State, national-level compliance with the 90% expenditure rule, and clear requirements for State-level attribution of scholarship awards. These guidelines will allow SGOs to operate efficiently while maintaining rigorous oversight at both State and federal levels.

7. Establishing Strong, Flexible Income Verification Procedures

SGOs should be permitted to verify income through tax documents, pay stubs, participation in federally means-tested programs, or school-administered eligibility determinations. These methods reduce barriers for families, leverage existing verification infrastructure, and support accurate, auditable eligibility determinations.

8. Requiring Comprehensive Reporting and Recordkeeping

Treasury should implement robust reporting requirements, including annual IRS information returns, granular transaction-level records for donations, scholarships, and payments to schools and providers of eligible education expenses, donor acknowledgment standards, and documentation of administrative expenses and fund segregation. These measures are essential for preventing fraud and maintaining public confidence in the program.

Collectively, these recommendations provide a framework that strengthens program integrity, supports compliant SGO operations, and ensures that §25F achieves Congress’s intended purpose of expanding educational opportunity for low- and middle-income families.

I. INTRODUCTION

EducationSuperHighway submits this comment in response to Notice 2025-70, requesting public input on implementation of the new federal tax credit for individual contributions to Scholarship Granting Organizations (SGOs) under §25F of the Internal Revenue Code.

EducationSuperHighway is a national nonprofit with more than a decade of experience building multi-state educational access programs for K-12 institutions. We support early-literacy interventions at a national scale and currently operate a scholarship-based model in Louisiana, including compliant income verification, fraud-prevention controls, student-eligibility reviews, and family application systems.

Our vantage point is both policy-systemic (as an organization preparing to operate as a multi-state SGO) and operational-practical (as a team running the types of workflows §25F requires). We appreciate Treasury's focus on program integrity and offer recommendations that promote rigorous certification, eliminate opportunities for fraud or misuse, and ensure that SGOs have the governance, financial controls, and technical capacity necessary to administer public benefits responsibly.

This submission includes both structured responses to the Notice's specific questions and additional recommendations that support national-scale, compliant SGO operations.

II. PROGRAM INTEGRITY AND RISK CONTEXT

Section §25F establishes a federal tax credit administered through third-party SGOs. Without clear and enforceable baseline standards, this structure presents identifiable risks of waste, fraud, and abuse that Treasury should address at the outset.

Key risk areas include:

- Formation of under-resourced SGOs lacking basic financial controls
- Diversions of funds through related party transactions or pass-through arrangements
- Improper donor influence or earmarking for specific students or schools
- Use of scholarship funds for ineligible educational expenses
- Vendors charging higher prices for tuition or eligible educational expenses for scholarship recipients than available when purchased without a tax credit scholarship
- Manipulation of administrative cost limits through accounting practices
- Inconsistent or unverifiable income eligibility determinations
- Use of multistate structures to evade oversight or exploit lesser state requirements

Similar vulnerabilities have emerged in state-level scholarship and education savings account programs where audit, reporting, and verification requirements were insufficiently specified. Because Section §25F relies on federal tax credits subsidized by taxpayers nationwide, inconsistent oversight across States would magnify waste, fraud, and abuse risks.

The recommendations that follow are intended to mitigate these risks by establishing clear national baseline standards for certification, financial controls, reporting, verification, and administrative capacity. Strong upfront rules will protect donors and families, reduce opportunities for misuse, and support Treasury's implementation of Section §25F as a durable national program with consistent integrity.

III. SCOPE OF COMMENT

This comment addresses the issues Treasury expressly solicited in Notice 2025-70, including:

- State certification processes and policies (Notice §§3.03–3.06)
- SGO eligibility and operational requirements (Notice §4)
- Multistate organizational structures and the treatment of contributions and expenditures across States (Notice §§3.03(5), 4.02)
- Reporting, recordkeeping, donor compliance, and fraud-prevention requirements (Notice §4.05)
- Definition of "located in the State" (Notice §3.05)

Our recommendations emphasize rigorous standards that help:

- Protect donor funds
- Ensure equitable access for eligible students
- Ensure funds are not used for ineligible expenses
- Prevent fraud, waste, and abuse
- Standardize compliance across States
- Ensure only SGOs with strong governance, financial integrity, and verification systems participate in this federal program

IV. COMMENTS AND RECOMMENDATIONS

A. Credit Amount and Per-Taxpayer Limitation (§ 25F(a)–(b))

Section 25F provides a nonrefundable federal income tax credit for an individual's qualified contributions to a scholarship-granting organization, subject to a \$1,700 limitation "to any taxpayer" for the taxable year. 26 U.S.C. § 25F(b). Treasury should clarify that this limitation applies per individual taxpayer, such that married taxpayers filing jointly may claim up to \$3,400 in aggregate, consistent with the long-standing interpretation of contribution-based incentives across the Internal Revenue Code. In addition, Treasury should ensure that all taxpayers who make qualified § 25F contributions can receive the credit for such contributions without having to itemize deductions on their tax returns.

1. Statutory Interpretation of "Any Taxpayer"

The statute provides that "the credit allowed under this section to any taxpayer for any taxable year shall not exceed \$1,700." 26 U.S.C. § 25F(b). The Code generally treats a joint return as the return of two taxpayers whose tax liabilities are computed together. See 26 U.S.C. § 6013(a); Treas. Reg. § 1.6013-1(a). Unless Congress expressly provides a joint or household-level limitation, Treasury and the IRS consistently interpret the term "taxpayer" to apply separately to each spouse whose liability is determined on the joint return.

Because § 25F contains no express joint-return limitation, and because the credit is tied to individual contributions, the structure of the provision supports a per-individual limitation.

2. Analogous Federal Tax Provisions Support a Per-Individual Interpretation

Treasury and the IRS consistently apply per-individual limitations in tax provisions that, like § 25F, are based on personal contributions or expenditures. Three closely related analogies demonstrate this interpretive pattern.

a. Charitable Contribution Deduction (§ 170)

Section 170 permits deductions for charitable contributions made by “the taxpayer.” On a joint return, Treasury treats each spouse as a separate donor, with each entitled to deduct his or her own contributions. See Treas. Reg. § 1.170A-1(g) (“The donor is the person who makes the contribution.”). The contribution-base percentage limitations of § 170(b) apply to the aggregate contributions, but only because Congress expressly provided that rule.

Nothing in § 25F contains analogous aggregation language. Since § 25F also incentivizes personal giving, its limitation should follow the § 170 model and apply per individual donor.

b. Education Credits (§ 25A)

The American Opportunity Tax Credit and Lifetime Learning Credit use the term “taxpayer” to determine eligibility and credit amounts. 26 U.S.C. § 25A(a)–(b). On a joint return:

- Each spouse may incur qualified education expenses for himself or herself;
- The credit is calculated separately for each student, and
- Congress imposes a household-level limitation only where it explicitly chooses to do so (e.g., the § 25A(d)(2) phase-out rules).

Treasury and the IRS treat education-credit limitations as individualized, not per return. See IRS Pub. 970, *Tax Benefits for Education*, ch. 2 (annual). Section 25F is similarly structured: the credit follows the individual’s own expenditures—here, qualified contributions—indicating that the limitation should likewise apply per individual taxpayer.

c. Individual Retirement Arrangements (IRAs) (§§ 219, 408)

IRA contribution limits are expressed in terms of “the taxpayer” or “an individual.” 26 U.S.C. §§ 219(b)(1), 408(a). Treasury and the IRS have long interpreted these limits to apply per spouse, permitting each spouse on a joint return to make contributions up to the statutory maximum. See Treas. Reg. § 1.219-1(a); IRS Pub. 590-A, *Contributions to IRAs*, ch. 1.

Although IRAs require separate accounts, the broader interpretive principle is that where a tax incentive is based on personal contributions, the IRS applies limitations individually, not per return, unless Congress explicitly provides otherwise. Section 25F fits squarely within this general approach.

3. Application to § 25F

Interpreting § 25F as applying **per individual taxpayer** is supported by statutory structure and consistent Treasury practice:

1. **No statutory aggregation rule.** Section 25F includes no language limiting the credit “per return,” “per household,” or “per joint filer.”

2. **Credit tied to personal contributions.** As with §§ 170, 25A, 219, and 408, § 25F attaches the tax benefit to the individual's own expenditures, favoring a per-individual interpretation.
3. **Consistent IRS and Treasury practice.** Where tax benefits arise from personal contributions, the IRS interprets "taxpayer" to mean each spouse separately unless Congress directs otherwise.
4. **Avoiding distortion.** A per-return limitation would disadvantage married couples relative to unmarried individuals, an outcome Congress typically avoids absent explicit statutory language.

Accordingly, Treasury should confirm that each spouse on a joint return may claim up to **\$1,700** in § 25F credits, allowing a maximum combined credit of **\$3,400** for married couples filing jointly.

4. Policy Rationale

Limiting joint returns to \$1,700 would create an unjustified marriage penalty. Under such an interpretation, two unmarried individuals living together could each claim \$1,700 (for a combined \$3,400 benefit), while a married couple filing jointly would be limited to \$1,700 total. Similarly, a married couple filing separately could claim \$3,400 combined, while the same couple filing jointly would receive only half that amount. This result would contradict both regulatory precedent and Congressional intent, penalizing marriage without any articulated policy justification.

5. Regulatory Clarity

Notice 2025-70 explicitly requests comments on unresolved §25F applications. Clarifying the per-taxpayer credit for joint filers directly addresses this request and would ensure consistent administration, reduce taxpayer confusion, and eliminate the potential for strategic filing decisions made solely to maximize credit benefits.

B. State Certification Processes and Baseline Standards (§§3.02–3.06)

Treasury asks what policies and procedures States should adopt to "reliably verify" that SGOs meet §25F(c)(5) requirements. EducationSuperHighway strongly supports uniform national baseline standards to avoid inconsistent oversight across States that could create regulatory arbitrage opportunities and undermine program integrity.

1. Mandatory State Certification Framework

Treasury should require each participating State to adopt a standardized compliance framework that includes:

- Verification of 501(c)(3) status and non-private-foundation classification through IRS Pub 78 or equivalent authoritative source
- Confirmation of proper fund segregation practices, ensuring §25F contributions are separately tracked and accounted for
- Review of operational compliance with §25F(d) requirements, including verification that the SGO has systems capable of tracking income eligibility, scholarship disbursements, and administrative expenses

- Annual compliance reviews of each listed SGO, including examination of scholarship records, income-verification procedures, fund-segregation practices, and disbursement and administrative expense documentation
- Prohibition on reliance upon SGO self-certification without independent verification
- Maintenance of a State-level risk-based audit plan with required escalation procedures for SGOs that fail to meet compliance thresholds

2. Rationale for National Standards

State-level tax credit scholarship programs have demonstrated that inconsistent oversight creates opportunities for exploitation. SGOs operating in multiple States could structure operations to take advantage of States with weaker certification requirements, potentially evading meaningful oversight entirely. Because §25F provides a federal tax benefit funded by all taxpayers regardless of State of residence, Treasury has both authority and obligation to establish minimum baseline standards that States must meet to participate in the program.

Uniform standards also protect compliant SGOs by creating a level playing field and preventing a "race to the bottom" where States compete for SGO listings by offering minimal oversight. This approach parallels Treasury's treatment of other federally subsidized programs administered through State partnerships, such as qualified tuition programs under §529.

a. National Standards to Ensure Program Integrity and Limit Waste, Fraud and Abuse

To prevent waste, fraud, and abuse, Treasury should establish national minimum requirements applicable to all SGOs, including:

- Annual independent audit by a certified public accountant.
- Minimum \$1 million surety bond (or scaled equivalent).
- Written conflict-of-interest policy and annual certification.
- Background checks for senior leadership and felony-disqualification affidavits.
- Minimum operating history to prevent the creation of fraudulent SGOs (e.g., two years as a federally approved non-profit) and a prohibition of approving SGOs that have not received their federal 501(c)(3) approval
- Documented operating and internal-control procedures.

These proposed requirements mirror established best practices in the nonprofit sector and are consistent with existing State SGO programs and fall within Treasury's authority under §25F(h). Virtually all state tax credit programs now require independent audits.

b. Universal Annual Independent Audits Must be Required of All SGOs

A universal annual independent audit requirement, regardless of the size of an SGO, is consistent with best practices in state K-12 tax credit programs and essential to the integrity of the program. An annual independent audit enables states and Treasury to verify compliance with §25F's 90% scholarship expenditure requirement, ensure that tax credit scholarships are only used for qualified educational expenses, detect and deter misuse of funds, and provide consistent assurance to taxpayers nationwide. Because taxpayers are

allowed to donate to SGOs in any state, regardless of their state of residence, federal accountability standards should apply to all SGOs, regardless of organizational size or contribution volume, to prevent waste, fraud and abuse. Indeed, evidence from state tax-credit programs shows that smaller SGOs face heightened fraud risk due to a lack of internal controls. Virtually all state tax credit and ESA programs now require independent audits for all SGOs, and Arizona recently introduced this requirement after experiencing significant fraud issues when an independent audit was not required, exploiting loopholes and uneven oversight.

3. Early Opt-In and Automatic Reapproval

EducationSuperHighway strongly supports Treasury's proposal in §3.02, allowing States to opt in during 2026, enabling SGOs to build compliant systems before January 1, 2027. This implementation timeline is essential for SGOs to develop the technical infrastructure, verification protocols, and operational procedures that §25F requires.

Once listed, SGOs should be automatically reapproved for subsequent years unless a State affirmatively removes the SGO for cause following proper notice and opportunity to cure. This approach reduces administrative churn, protects donor reliance, and allows SGOs to make multi-year operational and financial commitments necessary for effective program delivery. Automatic reapproval subject to ongoing compliance monitoring is consistent with how Treasury treats other continuing certification programs and appropriately balances administrative efficiency with accountability.

Automatic reapproval also insulates SGOs from political considerations or changes in state administration, ensuring that organizations meeting federal standards can operate consistently regardless of shifting political winds.

4. Mission-Aligned Scholarship Criteria

Treasury should confirm that SGOs may impose additional scholarship eligibility and governance standards aligned with their charitable missions, provided such standards do not conflict with §25F requirements or other applicable law.

Consistent with longstanding §501(c)(3) principles, SGOs routinely define and serve targeted charitable classes to advance their tax-exempt purposes. Treasury should clarify that all mission-aligned criteria are permissible including, for example:

- Limiting scholarships to students entering at designated grade levels (such as kindergarten or middle school entry points)
- Restricting scholarships to particular schools or categories of schools that align with the SGO's educational philosophy or instructional approach
- Conditioning scholarship awards on use of funds for specified educational interventions, instructional methodologies, or curricular approaches (such as structured literacy programs or classical education models)

Allowing mission-aligned criteria supports donor intent, promotes program integrity through clearly defined objectives, and enables SGOs to deliver specialized educational interventions with measurable outcomes. Prohibiting SGOs from adopting reasonable mission-based standards would undermine effective administration, reduce accountability, and discourage charitable participation, outcomes inconsistent with §25F's structure and purpose.

C. Administrative Capacity and the 90% Scholarship Expenditure Rule (\$§4.01–4.02)

Section §25F(d)(1)(B) requires that an SGO spend "not less than 90 percent of its income" on scholarships. Treasury's interpretation of this requirement will fundamentally determine whether compliant, high-integrity SGO operations are operationally feasible, particularly during startup phases and multi-state expansion.

1. Affirming the Full 10% Administrative Allowance

The statutory requirement that SGOs spend "not less than 90%" of income on scholarships necessarily permits SGOs to allocate up to 10% of covered income toward administrative and compliance activities. Treasury should explicitly affirm this full 10% allowance in regulation.

A full 10% administrative allowance is essential to support the compliance functions that §25F affirmatively requires or anticipates, including:

- Income and household-size verification systems using IRS documentation or equivalent federal standards
- Identity and residency verification protocols to prevent fraud and ensure scholarship recipients are real individuals
- Secure technical systems and data security controls to protect personally identifiable information and financial data
- Multistate contribution tracking and reconciliation systems
- Donor substantiation and reporting infrastructure to support IRS oversight
- Fraud-prevention tools, including payment controls, duplicate detection, and anomaly monitoring
- Preparation for, and completion of, required annual independent financial audits

Lower State-imposed administrative caps (for example, 3% or 5% limits found in some state programs) are insufficient for a federally supervised, high-integrity program and would materially undermine fraud prevention, data security, and reporting accuracy. Such restrictive caps might be feasible for SGOs operating in a single State with minimal federal oversight requirements, but they are incompatible with the compliance infrastructure §25F demands.

Treasury should therefore clarify that:

- The 10% administrative allowance is a federal standard inherent in §25F(d)(1)(B) and should not be narrowed by individual State requirements.
- The 10% administrative allowance covers all reasonable and necessary organizational expenses, including but not limited to: program administration, compliance functions, technology infrastructure, staff salaries, rent and facilities, professional services (legal, accounting, audit), donor and family outreach, insurance, and general operating costs essential to fulfilling the SGO's charitable mission.
- Transaction fees on donations that reduce amounts received by the SGO should not be counted against the 10% administrative allowance and instead should reduce the amount of donation the 10% administrative allowance can be applied to by the amount of the transaction fees. This treatment should not impact the credit a donor

receives. For example, if a donor makes a \$1,700 donation via credit card and the SGO is charged a 3% payment processing fee, the donor should receive a credit for \$1,700 and the SGO should be able to apply the 10% administrative fee to the \$1,649 net donation and not have to count the \$51 fee against the 10% administrative expense cap.

2. Allowing Donations to Scholarship Granting Organizations that are Not Subject to the 90% Scholarship Expenditure Rule

EducationSuperHighway agrees that Treasury should implement a strict 90% scholarship expenditure requirement on all funds raised that are eligible for the §25F tax credit. However, we do not believe that this rule should apply to funds raised by SGOs that are not eligible for the §25F tax credit. SGOs operating below the minimum efficient scale will require additional funds beyond the 10% allowed under §25F for administrative, compliance, infrastructure, and family and donor outreach expenses, and should be allowed to raise traditional charitable donations to support these expenses without these funds being subject to the 90% scholarship expenditure requirement.

To address this issue, Treasury should rule that SGOs must apply the 90% expenditure rule to the first \$1,700 of donations from any taxpayer (\$3,400 for married filing jointly), but that any additional donations, which are not eligible for the tax credit, are not subject to the 90% scholarship expenditure requirement. Similarly, Treasury should rule that donations from entities (foundations, businesses, etc.) that are not eligible for the §25F tax credit also are not subject to the 90% scholarship expenditure requirement.

In addition, Treasury should rule that all donations to SGOs prior to January 1, 2027, when §25F goes into effect, should not be subject to the 90% scholarship expenditure requirement to enable SGOs to fund startup expenses.

3. Safe-Harbor Framework for Non-Tax-Credit Income for Subscale SGOs

In the event that Treasury believes it must apply the 90% scholarship expenditure requirement to all organizational income, EducationSuperHighway proposes that Treasury implement a Safe-Harbor Framework to ensure that SGOs can operate effectively before achieving the minimum efficient scale of donations, where the 10% administrative allowance can cover its costs.

The Core Challenge: Treasury's proposed interpretation applying the 90% scholarship expenditure requirement to all organizational income would make compliant SGO operations infeasible, particularly during startup and early multi-State expansion. SGOs face minimum fixed administrative, compliance, and infrastructure and outreach costs that must be incurred before scholarships can be awarded at scale. A percentage-based limitation that applies from dollar one would force SGOs either to underinvest in federally required compliance systems or to delay operations until sufficient donation volume exists, outcomes that undermine both the integrity and effectiveness of the §25F credit.

Recommended Safe-Harbor Structure

Treasury should exclude from the 90% calculation a fixed safe-harbor amount of **non-tax-credit income** intended to support required administrative, compliance, infrastructure, and outreach costs. This safe harbor operates independently from, and in addition to, the 10% administrative allowance described above. The 10% allowance governs the share of covered income that may be devoted to administration once an SGO is operating at scale; the safe harbor recognizes that SGOs incur minimum fixed costs that

cannot feasibly be supported within a percentage-based limitation during early-stage operations.

A reasonable and defensible structure is:

- \$750,000 base national safe harbor, plus
- \$250,000 per State in which the SGO is listed and actively operating.

4. Rationale for Safe-Harbor Amounts

These amounts reflect the minimum fixed costs required to protect program integrity and comply with federal requirements:

National Infrastructure (\$750,000 base):

- Core technology platforms for application processing, income verification, payment disbursement, and contribution tracking
- Information security systems and data protection controls required for handling PII and financial information
- Compliance staffing, including legal, accounting, and program integrity personnel
- Third-party verification services (income, identity, fraud detection)
- Annual independent financial audit
- IRS reporting infrastructure and donor acknowledgment systems

Per-State Operations (\$250,000 per State):

- State-specific compliance staff and State liaison functions
- Customization of verification protocols for State-specific eligibility criteria
- State reporting and documentation requirements
- Relationship development with eligible schools within the State
- Donor and family outreach

These costs exist regardless of donor contribution volume and must be incurred before scholarships can be awarded responsibly at any meaningful scale. The proposed amounts are conservative estimates based on EducationSuperHighway's operational experience and industry benchmarking from similar compliance-intensive nonprofit programs.

5. Application of the 90% Rule After Safe Harbor

After the safe-harbor threshold is met, the SGO must apply the 90% scholarship expenditure requirement to remaining non-tax-credit income in the ordinary course. This preserves statutory intent while enabling operational feasibility. For example, an SGO operating in three States with \$2 million in startup funding ($\$750,000 \text{ base} + 3 \times \$250,000 \text{ per state} = \$1.5 \text{ million safe harbor}$) would need to spend 90% of all non-tax-credit income beyond \$1.5 million on scholarships.

6. Benefits of This Framework

This approach:

- Avoids subjective donor-intent classification that would create compliance uncertainty and administrative burden.
- Provides a bright-line rule that Treasury can administer and audit consistently
- Supports early-stage and multi-State SGOs without weakening accountability or creating opportunities for abuse.
- Aligns with the minimum efficient scale realities recognized in other federally supervised benefit programs.
- Enables SGOs to build robust compliance systems that strengthen, rather than undermine, program integrity.
- Enables SGOs to conduct family and donor outreach activities prior to having any §§25F donations.

Absent such a safe harbor, SGOs will be unable to build the systems necessary to ensure compliance with §§25F(c)(5) and 25F(d), ultimately undermining the credit's effectiveness and creating greater long-term fraud risks.

D. Timing of Scholarship Expenditures

1. Overview and Request

Treasury should clarify that Scholarship Granting Organizations (SGOs) may use contributions eligible for the § 25F tax credit that are received in a given calendar year for scholarships awarded in that year and the subsequent academic year. This interpretation is essential to the effective operation of § 25F, aligns with the statutory purpose of expanding educational access, and avoids unnecessary administrative burdens caused by the mismatch between federal tax rules and the structure of the American school calendar.

2. The Tax Year and School Year Are Structurally Misaligned

a. School years do not follow the tax year.

Most U.S. schools operate on an August–June academic calendar. This means:

- Scholarship decisions for the upcoming school year are made in late spring and early summer,
- Tuition payments and scholarship disbursements occur across two calendar years, and
- Enrollment periods require SGOs to commit scholarships months before the tax year ends.

If SGOs may only use tax-credit funds from a given calendar year for scholarships awarded within that same calendar year, the rule would be unworkable and inconsistent with actual school operations.

b. Donor behavior is concentrated at year-end.

As Treasury and the IRS recognize in the charitable giving context, a significant share of annual contributions occurs in November and December. Restricting SGOs to use these late-year funds only for scholarships awarded immediately would:

- Make it impossible to evaluate student need for the upcoming school year,
- Prevent SGOs from allocating funds responsibly, and
- Force SGOs to operate in an artificial “use-it-or-lose-it” cycle unrelated to academic realities.

c. The Statute’s Purpose Supports Cross-Year Use of Funds

i. Section 25F’s purpose is to expand student access to educational opportunities.

The statutory design incentivizes private donations for K–12 scholarships. Congress did not intend to impose administrative rules that undermine predictable scholarship availability or student planning.

ii. A one-calendar-year spending restriction would reduce scholarships and harm students.

Funding must be available when students enroll, not when donations happen to be received. If SGOs cannot carry funds into the next academic year:

- Students may lose scholarship opportunities due to timing rather than need.
- SGOs would be forced to rush awards in decisions without adequate assessment of eligibility.
- Scholarship funds would be allocated inefficiently, contrary to Congress’s intent.

iii. Treasury has long recognized similar timing flexibility in other credit and grant programs.

In multiple federal contexts (e.g., § 529 plans, education tax credits, charitable organization expenditure rules under § 170), Treasury allows reasonable timing flexibility so that funds can be used in ways that reflect the realities of academic schedules and enrollment cycles. There is no statutory text in § 25F indicating Congress intended a rigid one-calendar-year requirement.

d. Multi-Year Timing will Promote Administrative Efficiency

i. SGOs must engage in multi-month processes to evaluate student needs.

Scholarship decisions involve:

- Application intake,
- Income and eligibility verification,
- School placement/acceptance confirmation, and
- Award planning for the full academic year.

These processes cannot occur instantaneously at the end of the tax year.

ii. Many SGOs begin their scholarship cycles 6–9 months before the academic year.

If SGOs were required to spend donations solely in the year received:

- Planning cycles would become chaotic,
- SGOs would face excess pressure to make rapid year-end awards, and
- Fiscal stewardship and compliance oversight would suffer.

Allowing funds to roll into the next year aligns with standard nonprofit budgeting principles and avoids unnecessary administrative waste.

e. No Statutory Text Prohibits Use of Funds Across Academic Years

Nothing in § 25F:

- Limits SGOs to spending contributions in the year received,
- Imposes a “current-year expenditure requirement,” or
- Restricts the timing of scholarship award cycles.

Congress placed limitations on eligible contributions, credit amounts, and use-of-funds requirements, but did not impose a calendar-year restriction on scholarship distribution. Under established interpretive principles, where Congress omits a limitation found in other statutes, Treasury should not impose one by regulation.

f. Allowing Cross-Year Use Ensures Predictable Funding and Reduces Compliance Risk

Predictable funding is essential because:

- SGOs must guarantee scholarships before schools begin enrollment,
- Families rely on consistent commitments to plan school placements, and
- Providers need certainty that SGOs will meet scholarship obligations.

A rule forcing SGOs to spend funds only within the calendar year would create liquidity and planning risks that directly harm families.

g. Rationale

Treasury should clarify that § 25F permits SGOs to use tax-credit-funded contributions from one calendar year for scholarships awarded in:

- The same calendar year and
- The next academic/school year.

This reading:

- Aligns the program with real-world school enrollment cycles,
- Faithfully advances the statute’s purpose of expanding educational choice,
- Avoids arbitrary timing constraints not found in the statute, and
- Promotes responsible financial stewardship and predictable support for families.

E. Multistate SGO Operations (§§3.03(5), 4.02)

Treasury anticipates that many SGOs will operate in multiple States. A well-designed regulatory framework should enable multistate operations while maintaining rigorous compliance. EducationSuperHighway offers the following recommendations to support effective multistate SGO administration.

1. Donor Eligibility and State of Residence

Treasury should clarify that eligibility for the §25F credit is based on the status of the recipient SGO and the designated State of scholarship use, not the taxpayer's State of residence. Nothing in §25F limits contributions based on donor residency, and §25F(b) provides a federal credit that is independent of State opt-in decisions. A donor residing in State A should be eligible for the federal credit when contributing to an SGO that is properly certified in State B and designates the contribution for scholarships in State B, provided all other requirements are met.

This interpretation promotes charitable giving flexibility and is consistent with the federal nature of the credit. It also prevents State-residency requirements from creating unnecessary administrative complexity or limiting the reach of effective SGO programs.

2. Definition of "Located in the State"

Treasury should treat an SGO as "located in" any State in which it is:

- Authorized to operate and conduct business.
- Registered to conduct charitable solicitation activity (where such registration is required by State law).

This functional definition recognizes that modern nonprofit operations, particularly those involving digital platforms and nationwide services, do not depend on physical presence. It parallels how States treat charitable organizations for purposes of registration and oversight, and it ensures that SGOs can serve families effectively without maintaining separate legal entities in each State.

3. State-Level Tracking and Documentation

Multistate SGOs should maintain State-level records sufficient to support State and IRS oversight, including:

- State-specific donor contribution records showing donor state designation choices.
- Scholarship disbursement documentation organized by State, showing recipient eligibility and school information.
- Scholarship expenditures disbursement documentation identifying which schools and vendors have received scholarship payments, the number of students they have received payment for, the total amount of payments received and the type of eligible educational expense the payments were for.
- Income verification records tied to State-specific eligibility determinations.
- Administrative expense allocations demonstrating compliance with State-specific requirements where applicable.

This State-level documentation ensures accountability while permitting SGOs to operate efficiently through unified national systems and platforms.

4. National-Level Compliance with 90% Requirement

Treasury should allow multistate SGOs to satisfy the 90% scholarship expenditure requirement on a national, aggregate basis, while still requiring that scholarship disbursements within each State align with donor designations and State-level eligibility rules.

This approach recognizes that many compliance and administrative costs (technology platforms, data security, audit functions, fraud prevention systems) benefit the entire organization and cannot meaningfully be allocated to individual States. State-by-State application of the 90% rule would create artificial accounting requirements and potentially penalize SGOs for operating efficiently at scale.

National-level compliance is consistent with how Treasury treats other multistate charitable programs and ensures that administrative resources support scholarship delivery across all States rather than creating unnecessary overhead through State-specific segregation requirements.

5. Donor Contributions Without State Designation

SGOs should be required to offer donors the option to designate a specific participating State or select "no preference." When donors elect not to designate a State, the SGO should assign the contribution to a participating State before issuing the donor acknowledgment letter required for tax purposes.

This flexibility accommodates donors who wish to support an SGO's mission generally without geographic restrictions, while ensuring that all contributions are properly assigned for compliance tracking. It also reduces the potential that SGOs will be unable to award scholarships equivalent to the donations received. The assignment requirement prevents ambiguity about which State's rules govern scholarship awards funded by particular contributions and enables proper State-level reporting.

6. Rationale

A multi-state SGO model requires flexibility for donors nationwide and consistent operational rules across States. State-level scholarship compliance protects program integrity and respects State autonomy, while national-level organizational compliance promotes efficiency, supports multistate operations, reduces administrative burden, and ensures alignment with §25F's family-centered objectives. This framework allows SGOs to serve families effectively while maintaining strong accountability to both State and federal oversight.

F. Income Verification and Fraud Prevention (§4.05(3))

Treasury requests comments on how SGOs should verify household income for purposes of the §25F(c)(5)(B) eligibility requirement that scholarships be awarded to students from families with household income not exceeding 300% of area median gross income. EducationSuperHighway strongly supports secure, federally auditable verification systems that minimize burden on families while maintaining high program integrity.

EducationSuperHighway has significant experience with eligibility verification that stems from its role in helping over 4 million households enroll in the Affordable Connectivity Program (ACP) administered by the Federal Communications Commission. Eligibility verification proved to be the most significant barrier to families participating in the ACP, and EducationSuperHighway's more recent experience providing educational scholarships in Louisiana shows that this will also be a significant barrier for eligible families to take advantage of §25F scholarships.

The most important lessons learned from EducationSuperHighway's experience with family enrollment in the ACP were:

1. The importance of allowing schools to verify family eligibility by providing documentation that they were enrolled in the Free and Reduced Price Lunch Program;
2. The importance of allowing families to verify income eligibility by confirming they were enrolled in other government programs such as SNAP, WIC, and Medicaid that had income requirements equal to or lower than the ACP;
3. The value of having a centralized system (the FCC's National Verifier) that allowed internet service providers to easily verify eligibility through an electronic interface.

EducationSuperHighway strongly recommends that Treasury adopt similar approaches to student eligibility verification to ensure that as many eligible families as possible are able to take advantage of §25F scholarships.

1. Primary Verification Methods

Families should be able to verify income using primary federal documentation, including:

- Prior year's federal, state, or Tribal tax return.
- Current income statements or pay stubs covering recent months (often 3 consecutive months).
- Social Security benefit statements (e.g., SSA-1099).
- Unemployment compensation statements.
- Worker's compensation or disability benefit statements.
- Retirement, pension, or Veterans Administration benefit statements.
- Divorce decree or child support order showing income.

These documents must show household members' gross income and generally have recent dates to demonstrate current income status.

2. School-Based Verification

Schools and districts routinely verify income for federal and state means-tested programs, including Free and Reduced-Price Lunch (FRPL) and various state scholarship or assistance programs. These verification systems are subject to federal oversight and audit requirements, making them reliable indicators of household income levels.

When a school or district determines that a student meets income criteria aligned with §25F eligibility requirements (household income at or below 300% of area median gross income), SGOs should be permitted to rely on this determination as a valid and auditable verification pathway. This approach:

- Reduces administrative burden on families who have already provided documentation to their schools.
- Leverages existing federal and state verification infrastructure rather than requiring duplicative processes.
- Ensures consistency across educational benefit programs.

- Relies on determinations already subject to federal audit and compliance requirements.

SGOs using school-based verification should be required to obtain and retain a letter or official school document showing the child's enrollment in the Free or Reduced-Price School Lunch or Breakfast program.

3. Alternative Income Verification Methods

Many federal benefits programs have income thresholds that are below the 300% AMGI requirement of §25F. Families should be allowed to prove eligibility by providing proof that any member of the household is enrolled in one of these programs at the time their students will receive a §25F scholarship. These programs include:

1. SNAP (Supplemental Nutrition Assistance Program)
2. Medicaid
3. Federal Public Housing Assistance
4. Supplemental Security Income (SSI)
5. Special Supplemental Nutrition Program for Women, Infants & Children (WIC)
6. Veterans Pension or Survivors Benefit
7. Free and Reduced-Price School Lunch or School Breakfast programs
8. Participation in a qualifying tribal assistance program (e.g., Tribal TANF, BIA General Assistance, Food Distribution Program on Indian Reservations)

Instead of income documents, applicants can provide official letters, benefit statements, verification letters, or screenshots from the issuing agency showing program participation.

4. Rationale

Income thresholds are central to §25F program integrity. The verification framework described above balances multiple objectives: ensuring accurate determinations that protect the program from abuse; minimizing administrative burden on families through use of existing verification systems where appropriate; leveraging established federal oversight mechanisms; and maintaining strong audit trails that support Treasury's supervisory responsibilities. Allowing SGOs to rely on federally recognized school-based verification systems, in particular, reduces family burden while avoiding duplicate verification processes and ensuring consistency across educational benefit programs.

G. Reporting and Recordkeeping Requirements (§4.05)

Strong reporting obligations will help IRS monitor compliance, prevent improper credits, protect donors, and maintain public confidence in the program. EducationSuperHighway recommends the following reporting and recordkeeping framework.

1. Annual IRS Information Return

Treasury should require SGOs to file an annual IRS information return (which could be designated Form 25F-1 or incorporated into Form 990 as a new schedule) reporting:

- Aggregate donor contribution data, including donor numbers, contribution amounts, and State designations.
- Anonymized scholarship recipient data showing the number of students served, aggregate scholarship amounts by State, and confirmation of income eligibility verification methods used.
- Aggregate scholarship expenditures disbursement documentation identifying which schools and vendors have received scholarship payments, the number of students they have received payment for, the total amount of payments received, and the type of eligible educational expense the payments were for.
- Detailed administrative expense documentation showing compliance with the 10% limitation and safe-harbor framework.
- Fund segregation data confirming §25F contributions and related expenditures are separately tracked.
- Reconciliation of qualified contributions to scholarship disbursements, demonstrating compliance with the 90% rule.
- Summary of fraud prevention measures implemented and any detected fraud incidents.

This comprehensive annual return would enable the IRS to identify compliance issues, detect patterns suggesting fraud or abuse, and conduct risk-based examinations efficiently.

2. Donor Acknowledgment Letters

SGOs must provide donors with acknowledgement letters containing required substantiation information and clear disclosures. These letters should include:

- Statement that the contribution qualifies for the §25F credit
- Contribution amount and date
- State designation assigned to the contribution
- Clear disclosure of the \$1,700 per-taxpayer federal credit limitation (or \$3,400 for married couples filing jointly)
- Explanation of how the §25F credit interacts with any available State tax credits
- Disclosure regarding treatment under §170 and limits on charitable deductions for contributions claimed under §25F
- SGO contact information for questions

3. Transaction-Level Recordkeeping

SGOs must maintain granular transaction-level sub-ledgers available for IRS examination, including:

- Individual contribution records with donor information, amounts, dates, and State assignments.
- Individual scholarship award records with student information, eligibility verification documentation, school information, and disbursement details.

- Scholarship expenditures disbursement documentation listing which schools and vendors received scholarship payments for each scholarship, the amount of the payment, and the type of eligible educational expense the payment was for.
- Administrative expense documentation with invoice-level detail and allocation methodologies.
- Bank statements and financial reconciliations demonstrating proper fund segregation.

4. Rationale

These reporting and recordkeeping requirements reflect best practices in federal benefit administration and mirror reporting structures already used in analogous programs. They provide Treasury with the information necessary to administer the credit effectively, conduct risk-based compliance reviews, and respond to Congressional and public accountability concerns. Clear donor disclosures ensure that taxpayers understand credit limitations and interactions with other tax benefits, reducing confusion and potential filing errors.

V. CONCLUSION

EducationSuperHighway appreciates Treasury's rigorous, integrity-focused approach to implementing §25F. This new federal tax credit will affect families, schools, and Scholarship Granting Organizations across the country, and its success depends on establishing strong national standards, preventing waste, fraud, and abuse, and enabling SGOs to build the operational capacity required to administer scholarships effectively and equitably.

Drawing on our experience operating a scholarship program in Louisiana and supporting multi-state education access initiatives, we respectfully recommend that Treasury adopt regulations that:

- **Require uniform national certification and oversight standards**, including conflict-of-interest policies, risk-based reviews, verification controls, and most critically, mandatory annual independent audits for every SGO, regardless of size. Uniform national standards will reduce regulatory arbitrage, enhance accountability, and ensure consistent program integrity across States.
- **Clarify that the \$1,700 credit limitation applies per individual taxpayer**, allowing married couples filing jointly to claim up to \$3,400. This interpretation aligns with longstanding IRS practice under analogous statutes and avoids an unintended marriage penalty.
- **Support SGO operational feasibility by affirming the full 10% administrative allowance** in §25F(d)(1)(B) and by clarifying that donations not eligible for a federal tax credit, including donations exceeding the allowable credit limit, may be used to support essential program administration, compliance systems, and outreach activities. Treasury should either exclude such donations from the 90% scholarship expenditure requirement or adopt a safe-harbor framework that exempts a fixed amount of non-tax-credit income to ensure SGOs can meet federally required standards for verification, fraud prevention, technology, reporting, and donor and family engagement.
- **Permit SGOs to use contributions across academic years**, recognizing that the academic calendar does not align with the tax year. Cross-year flexibility is essential for predictable budgeting, timely scholarship decisions, and responsible financial

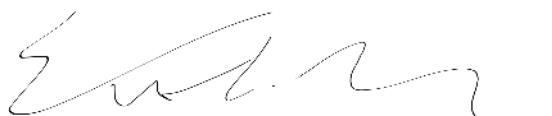
stewardship.

- **Enable effective multistate operations while maintaining rigorous oversight**, including clarifying donor eligibility regardless of residency, adopting functional criteria for when an SGO is “located in” a State, allowing national-level application of the 90% expenditure rule, and requiring proper State-level attribution of scholarship awards.
- **Allow donors to select a “no preference” designation** when contributing to multistate SGOs, enabling them to support an organization’s underlying mission or scholarship model even when they do not have a preference as to the State in which scholarships are awarded. SGOs would assign such contributions to a participating State before issuing the required acknowledgment, reducing donor friction while ensuring contributions are properly attributed for State-level compliance and reporting.
- **Adopt strong, flexible income verification procedures**, permitting eligibility determinations based on tax documents, pay stubs, participation in federal means-tested programs, or school-administered determinations. These approaches reduce barriers for families, leverage existing verification infrastructure, and support accurate and auditable eligibility verification.
- **Implement comprehensive reporting and recordkeeping requirements**, including an annual IRS information return, detailed transaction-level documentation of contributions, scholarships, and payments to schools and providers, standardized donor acknowledgment letters, and clear evidence of fund segregation and administrative-expense compliance.

Collectively, these recommendations create a regulatory framework that strengthens program integrity, promotes equitable access for eligible students, and enables SGOs to operate responsibly and sustainably at a national scale. They emphasize both accountability and operational feasibility, ensuring that §25F fulfills Congress’s purpose of expanding educational opportunity for low- and middle-income families.

EducationSuperHighway stands ready to support Treasury and State partners as they finalize regulations and implement this important new program.

Respectfully submitted,



Evan Marwell, CEO
EducationSuperHighway