THE Cardinal Newman SOCIETY

Promoting and Defending Faithful Catholic Education

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

Response to Request for Comments on Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations

The Cardinal Newman Society welcomes the opportunity to respond to Notice 2025-70 and is grateful to the Trump administration and Congress for the passage of the nation's first federal tax credit scholarship program, as part of the One, Big, Beautiful Bill Act (OBBBA). This program has the potential of helping countless families provide their children with an education suited to their needs.

School choice is especially important to Catholic families and Catholic education. In most States, secular government-controlled schools have a monopoly on taxpayer funding for education, and many of these "public schools" have become outright hostile to the beliefs and values of Christian families. Because of this competitive imbalance and States' refusal to support families choosing religious education, many Catholic families are unable to afford and freely choose schools that educate their children with the insights, values, and practices of the Catholic faith. Public policy has effectively coerced Catholic families into public schools that reject truths of God and the Catholic faith. This is not the religious freedom promised by the First Amendment.

Only the equitable allocation of taxpayer funds for the use of each student according to their parents' choice of schooling will resolve this injustice and bias against religion. This federal tax credit is a partial step toward a better system.

Still, without regulations that ensure the equitable allocation of funds from scholarship granting organizations (SGOs), the new federal tax credit scholarship program could easily become yet another tool to further erode religious education by effectively excluding its students, thus increasing the incentive to choose secular private schools as well as public schools. Without well-written regulations, the program could also be used by States to disadvantage families who choose innovative microschools, homeschooling, and hybrid programs, which are especially important to families seeking affordable and faithful options for Catholic education.

The Cardinal Newman Society promotes and defends faithful Catholic education by recognizing schools, colleges, graduate programs, and home and school curriculum providers that meet high

standards of fidelity to Catholic teaching and formation of students in the light of our Catholic faith, without compromise to Catholic beliefs or morals. Our Newman Guide is the hallmark of faithful Catholic education, helping families find education that meets our high standards of fidelity and formation. Our comments on the Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations are primarily focused on protecting the access of families choosing religious schools, homeschooling, and alternative programs of education.

Ensure Eligibility of Families in Religious Schools

Notice 2025-70 asks for the "types of uniform policies, procedures, recordkeeping or other requirements would be reasonable to help ensure that a State will be able to reliably verify that each SGO meets each of the requirements in § 25F(c)(5)" of the Internal Revenue Code (Request for Comments § 3.04 (1)) and how States that are "already participating in State-level programs similar to § 25F can do the same.

An SGO is prohibited under § 25F(c)(5)(d)(1)(C) from providing "scholarships for any expenses other than qualified elementary or secondary education expenses." According to § 25F(c)(4), a "qualified elementary or secondary education expense" is defined elsewhere in Public Law § 530(b)(3)(A), which governs Coverdell Education Savings Accounts. It restricts eligible expenses to those used by "an elementary or secondary school student at a public, private, or religious school."

The law, then, is explicit about the eligibility of families choosing religious private schools. Two recent Supreme Court rulings—*Carson v. Makin* (U.S. Supreme Court 2022) and *Espinoza v. Montana Department of Revenue* (U.S. Supreme Court 2020)—have also made it clear that public funds to allow students to attend private schools cannot discriminate against religious schools under the Free Exercise Clause of the Constitution. Nevertheless, there is a historical proclivity in some States to restrict the participation of families choosing religious schools from State education programs, and there is a danger that some States will attempt to apply such biases when certifying to the Internal Revenue Service (IRS) that certain SGOs are qualified for this federal tax credit scholarship program.

In addition, Notice 2025-70 contemplates that forthcoming regulations will not "prohibit an SGO from itself imposing additional governing provisions beyond the requirements imposed by § 25F(c)(5) unless such a provision would conflict with the ability of the SGO to satisfy such requirements." Any attempt by an SGO to prevent scholarships to students attending religious schools would clearly and directly "conflict with the ability of the SGO to satisfy such requirements." Nevertheless, we anticipate that SGOs in States that are hostile to the use of taxpayer funds for religious education could attempt such restrictions.

Therefore, we recommend that the regulations:

1. **Clearly restate the definition of "qualified elementary or secondary education expense" (referenced in Public Law § 530(b)(3)(A)) to include expenses used by "an elementary or secondary school student at a public, private, or religious school."**

2. **Require that the verification of an SGO's compliance with § 25F(c)(5) include assurance that the SGO's scholarships cover expenses at religious schools, without any limitation based on a school's religious mission.**

3. **Prohibit States from imposing any requirement on SGOs that would conflict with § 25F(c)(5) by excluding or in any way limiting scholarships for expenses at a religious school because of the school's religious mission.**

Ensure the Free Exercise of Religious Schools

Beyond restrictions on scholarships to students attending religious schools, such students' equitable access to scholarship funds could be eroded by State and SGO requirements that indirectly but effectively force faithful religious schools either to compromise their religious beliefs or reject scholarship funds.

This can be done by limiting the definition of "school"—as in § 25F(c)(4) and, by reference, Public Law § 530(b)(3)(A) to define a "qualified elementary or secondary education expense"—as an institution meeting certain State laws and regulations that conflict with religious beliefs. If the regulations will allow SGOs to impose requirements beyond those specified by law, it is possible that an SGO could also limit its definition of "school" in such a way that it conflicts with a school's religious beliefs, practices, and heritage.

Such impositions could include, for example:

- An employee health insurance mandate that violates a school's religious beliefs, such as mandatory coverage for abortion, contraception, or *in vitro* fertilization techniques.

- A diversity requirement for students or faculty that conforms to the racial composition of the community but not the racial composition of a school's affiliated church or religion.

- A "gender identity" mandate that requires schools to allow boys in girl's sports, bathrooms, and locker rooms or mandatory use of pronouns contrary to a student's sex.

- Admissions requirements that force a school to admit students whose families are not in conformity with the schools' religious and moral beliefs.

Section 25F(c)(5) clearly intends that families choosing religious schools will not be excluded from the scholarships supported by the SGOs. Therefore, we recommend that the regulations:

1. **Require that the verification of an SGO's compliance with § 25F(c)(5) include assurance that the SGO's scholarships cover expenses at religious schools, including by making exception to any SGO requirement or policy that conflicts with a school's religious beliefs, morals, practices, or heritage.**

2. **Prohibit States from imposing any requirement or any definition of "school" on SGOs that would limit scholarships covering expenses at a religious school because the school's religious beliefs, morals, practices, or heritage conflict with the State's expectations.**

Ensure Eligibility of Families in Homeschool, Hybrid, and Other Alternative Education

Internal Revenue Code § 25F(c)(5), by reference to Public Law § 530(b)(3)(A), says eligible expenses include those used by "an elementary or secondary school student at a public, private, or religious school." This is unclear, however, as to whether "school" includes homeschools, microschools, hybrid programs, and other alternative forms of schooling that are rapidly growing and enjoying strong support from families, including Catholics.

Congress refers to § 530(b)(3)(A) governing Coverdell Education Savings Accounts, but not to § 530(b)(3)(B), which says that the definition of "school" shall be "determined under State law." This provision has been problematic for the Coverdell program, creating inconsistencies across States. Some States define homeschools as "private schools," and so homeschooling families have access to Coverdell Education Savings Accounts for homeschooling expenses. Other States discriminate against homeschooling families, shutting them out of the Coverdell program.

It would seem in the spirit of the OBBBA that the most robust choice of schooling was anticipated by the Trump administration and Congress. "This is about educational freedom," said President Trump during the bill's signing ceremony. "The money should follow the child—not be trapped in failing government schools." President Trump has repeatedly stated his intention to expand school choice for homeschoolers, and news outlets reported in July that the scholarship tax credit would support homeschoolers, conveying a widespread expectation. The original House bill explicitly included homeschooling. Students schooled at home typically outperform graduates of public schools and have opportunities for religious formation not permitted in public schools.

Congress could easily have referenced all of § 530(b)(3), referencing the Coverdell definition of "school" as well as "qualified elementary and secondary education expenses," but it did not. Clearly Congress did not want to adopt the Coverdell option of allowing each State to define "school" independently and with various interpretations. The regulations for the new federal tax credit scholarship program, therefore, should explicitly define "school" for the purposes of OBBBA and include homeschools, microschools, hybrid programs, and other alternative forms of schooling.

We recommend that the regulations:

1. **Explicitly define "school" within the definition of "qualified elementary and secondary education expenses" to mean any program of formal education that is legally permitted in the State in which it occurs.**

Limit State authority

While Notice 2025-70 anticipates regulations requiring States to opt in to the scholarship tax credit program and verify that participating SGOs meet the requirements of § 25F(c)(5), there is no reason under the law to allow States any authority to impose any requirement whatsoever on any SGO or any school that is not explicitly stated in the law or regulations. The verification process can be simple and straightforward, with a checklist of requirements and the means to provide assurance that the requirements are met. Therefore, we recommend that the regulations:

1. **Prohibit States from imposing any requirement for qualification of an SGO in addition to what is stated in § 25F(c)(5).**

2. **Clarify that the regulations imply no power to a State to direct or control any SGO.**

Thank you for this opportunity to respond to Notice 2025-70 and comment on how the forthcoming Treasury regulations will help countless families provide their children with an education suited to their needs. In summary, we recommend that the regulations:

1. Clearly restate the definition of "qualified elementary or secondary education expense" (found by reference in Public Law § 530(b)(3)(A)) to include expenses used by "an elementary or secondary school student at a public, private, or religious school."

2. Explicitly define "school" within the definition of "qualified elementary and secondary education expenses" to mean any program of formal education that is legally permitted in the State in which it occurs.

3. Require that the verification of an SGO's compliance with § 25F(c)(5) include assurance that the SGO's scholarships cover expenses at religious schools, without any limitation based on a school's religious mission.

4. Require that the verification of an SGO's compliance with § 25F(c)(5) include assurance that the SGO's scholarships cover expenses at religious schools, including by making exception to any SGO requirement or policy that conflicts with a school's religious beliefs, morals, practices, or heritage.

5. Prohibit States from imposing any requirement on SGOs that would conflict with § 25F(c)(5) by excluding or in any way limiting scholarships for expenses at a religious school because of the school's religious mission.

6. Prohibit States from imposing any requirement or any definition of "school" on SGOs that would limit scholarships covering expenses at a religious school because the school's religious beliefs, morals, practices, or heritage conflict with the State's expectations.

7. Prohibit States from imposing any requirement for qualification of an SGO in addition to what is stated in § 25F(c)(5).

8. Clarify that the regulations imply no power to a State to direct or control any SGO.

You can contact me at (703) 367-0333 or preilly@CardinalNewmanSociety.org.

Sincerely,

Patrick J. Reilly
President