Federal Tax Credit Scholarship Treasury Regulations

The American Association of Christian Schools (AACS) and the Association of Christian Schools International (ACSI) are grateful for the passage of the nation's first federal tax credit scholarship program. This historic program has the potential to help countless families provide their children with an education suited to their needs. As the nation's foremost evangelical school associations, AACS and ACSI have unique insight into how the forthcoming Treasury regulations can ensure the program's success. In light of these insights, AACS and ACSI request attention to four essential elements as regulations are crafted: religious liberty/school autonomy, national operation, married contributions, and student transferability.

Religious Liberty/School Autonomy

Treasury regulations must protect the federal nature of the program by prohibiting governors from adding any additional requirements to scholarship-granting organizations (SGOs) beyond what the federal law outlines. It is essential that regulations protect SGOs and schools from the personal policy preferences of governors. This clarification will create a level playing field for SGOs and allow for a diversity of options for families. We have already seen discrimination in state-level programs that prohibit religious schools and families from participating. This prohibition is often disguised in so-called "nondiscrimination" requirements designed to prevent religious school participation (see Maine's attempt to discriminate against Bangor Christian Schools despite the U.S. Supreme Court's ruling in *Carson v. Makin* and North Carolina Gov. Josh Stein's statement that he would exclude private sector schools by approving only SGOs that serve public school students).

The new federal law clearly allows governors only a simple opt in or opt out. Thus, the regulations must ensure that any eligible SGO that meets the federal requirements may operate within the state when a governor opts in. It is important that federal regulations prevent governors from yielding to the temptation to play politics with the program by adding additional regulations to distort it. Such regulations are essential to preventing the inevitable lawsuits that will cost taxpayer money, suppress access to the education choices parents need, and hinder the program's viability.

National Operation

Treasury regulations must ensure that all federally eligible SGOs may grant scholarships in any state that has opted into the program. National and state SGOs have successfully operated for decades and must not be excluded from operating in any state that participates in the federal program. Ensuring the inclusion of existing SGOs will bolster access for families and the success of the federal program. Thus, SGOs must not be forced to seek certification for operation or registration within any participating state. Since any SGO may receive donations from taxpayers across the United States, these same SGOs should also be allowed to grant scholarships to students in any state that opts into the program.

Federal regulations will threaten the program's success and families' access to the education choice they need if the regulations interpret the statute's term "located in the state" to require incorporation within individual states. For example, AACS and ACSI operate SGOs incorporated in Tennessee and Colorado, respectively. The regulations must not interpret "located in" to mean "incorporated in."

If the new regulations force national SGOs to incorporate or register separately in every participating state, the inevitable result will be to hamstring the program, increase confusion for parents and donors, and limit the number of students served.

The purpose of a federal school choice program is to ensure it operates nationally. Any regulation to require incorporation in each state would fly in the face of that purpose, serve to put national SGOs at an unnecessary disadvantage, and defeat the efficiencies that can be achieved by the economy of scale national SGOs bring to the program. At the same time, avoiding such a regulation does not harm to state-based SGOs which may still thrive.

Married Contributions

Treasury regulations must ensure regulations do not discriminate against married couples. The law allows each taxpayer to donate up to $1,700. Regulations should ensure married individuals filing jointly on taxes each can receive the benefit, allowing up to $3,400 total.

Treasury will expand the program's success by allowing every taxpayer, including taxpayers filing jointly, to contribute. With more eligible contributors, more students will benefit from the program.

Student Flexibility

Treasury regulations must maximize student participation. The law does not consider situations in which students reside in states that opt in to the program but attend school in states that have not, and vice versa. Therefore, Treasury should clarify this point in a way that allows the greatest freedom for families to participate which is in line with the spirit of the law. This is particularly relevant for military families and those who live along state borders or in areas like metropolitan D.C. The regulations should provide broad flexibility to maximize the number of students who can benefit. The regulations should ensure that funds follow the students so that, if they live in a state that opts in and attend school in one that does not, they can still use the scholarship. If they live in a state that does not opt-in but attend school in a state that does, they can also participate. Thus, regulations ensuring participation based on residency and / or school location will allow for maximum student participation.