



## State Participation in Federal School Choice

In early July 2025, the U.S. Congress passed, and President Trump signed into law, the first federal scholarship tax credit provisions that could benefit children in all 50 states. These new provisions were included in the *One, Big, Beautiful Bill Act*.

The new federal school choice law, effective January 1, 2027, will provide a 100 percent federal tax credit against individual income taxes for donations to qualified scholarship granting organizations (SGOs) that award K-12 scholarships for tuition and other eligible education expenses. The maximum amount of tax credits available is \$1,700 for all federal income tax filers. That means both individual and married filers are limited to \$1,700.

### **The “Opt-in” Provision**

The federal school choice law (section 25F of the Internal Revenue Code) includes a requirement in subsection (g) that the “Governor of the State or 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” decides whether SGOs in the state can receive the tax credit donations to benefit children. This “opt-in” provision necessitates the Governor or designated individual or entity to submit a list of eligible SGOs located in the state to the U.S. Department of the Treasury annually not later than January 1 of the succeeding year for the eligible SGOs to receive the tax credit donations to fund scholarships for children.

There are several features regarding this statutory provision, which will be further defined and clarified in rulemaking by the U.S. Department of the Treasury. Note several process issues:

- A state can decide not to “opt-in” since a state is not mandated to submit to the U.S. Treasury Department an annual list of qualifying SGOs.
- A state that decides to participate in the federal school choice law must make the determination that each SGO listed “meet the requirements” of the law that apply to SGOs (as defined by the statute). The individual governor’s process for making such determinations on SGO compliance is not defined in the statute, and likely will be detailed in Treasury Department regulations.
- It is important to note the following:
  - There is no other basis under federal this law by which a governor determines which SGOs are listed, meaning, additional governor-imposed criteria would be beyond the scope of the federal law; and
  - A state should not limit the list to the governor’s preference of SGOs or reflect a policy bias, i.e., either the SGO qualifies under the federal law, or it does not, regardless of the entity’s choice of schools or eligible services, or underlying philosophy. However, it is unclear what the result would be if a state law imposed additional requirements on SGOs only effective at the state level. If such requirements are consistent with the federal statute, that would likely be acceptable. If in conflict, the outcome is less certain.

- The governor of each state is the decision maker whether to opt-in to the federal school choice program “or other individual, agency, or entity as is designated under state law to make such” decisions on behalf of the state “with respect to federal tax benefits.” If no such state law exists, the legislature of a state could enact one that provides an alternative to the governor to decide state participation by submitting an annual list of SGOs.

### **The Case for Opt-in**

The governors of every state should be encouraged to opt-in to the federal scholarship tax credit so that their state’s children can benefit from resulting scholarship dollars for K-12 use. The arguments for states to “opt-in” to this federal school choice law include, but are not limited to, the following:

- Empowering parents, benefitting children. Families benefit from the scholarship tax credits by financially empowering parents to access school options that best meet the educational needs of their children and best reflect or respect their values.
- No cost to the state. Expanding school choice in a state using the federal law would be cost-free to the state since private charitable donations would fund the scholarships, with the resulting tax revenue loss incurred at the federal level, not individual state coffers.
- Keeping resident donations in-state. States that do not participate in the federal school choice law by opting-in will lose charitable donations from state taxpayers who instead will support eligible SGOs located in states that do opt-in. For example, if 10,000 donors maximize their allowable donations to an out-of-state SGO—which is feasible since their federal tax liability would be lowered by the donation amount, costing them nothing—that would mean \$17 million would fund scholarships for children in other states attending public, private or religious schools. If 60,000 donors contributed the maximum out of state, then more than \$100 million would benefit non-resident children.
- School choice works. Of the more than 200 empirical studies published in the last 25 years, 86 percent show positive results in one or more areas studied, including student test scores, parent satisfaction, fiscal savings, college matriculation, and public school academic performance.
- School choice is popular. Public support for school choice has been consistently positive with overwhelming majority support from voters for many years. This has also been the case among subsets of voters according to racial, ethnic and political party lines, and especially from parents with school-age children. For example, Fabrizio, Lee & Associates, one of the nation’s premier public opinion research firms, conducted a survey on January 5-8, 2025 of U.S. voters nationwide on the issue of school choice. They found:
  - Voters favor school choice by 74 percent where parents are allowed to choose the public, private or technical trade school to which they send their children.
  - 81 percent of voters agree that the U.S. should empower parents and prioritize individual students’ needs by providing greater access and more choices to ensure children receive the best education.
  - Among Hispanic voters, 78 percent favor school choice where parents are allowed to choose the public, private or technical trade school to send their children.

Registered Democratic voters are also strongly in favor of school choice according to numerous polling samples, including the following:

- According to the [\*Schooling in America\*](#)'s 2024 comprehensive survey of 1,502 adults and 2,319 parents by EdChoice and Braun Research, education savings accounts (ESA) have substantial support from Democratic respondents, with 77 percent in favor. The overall adult population surveyed was 76 percent in favor, and parents of school-age children provided 84 percent support. Note that the federal school choice law is a tax credit scholarship mechanism to privately fund scholarships, but which have potentially multiple uses akin to an ESA.
- Tax credit scholarships, the specific method of providing school choice under the new federal law, had 69 percent public support, with 79 percent of parents with school-age children in support. Respondent views by political party were not included in the published survey.

### **Advocating for Governors to Opt-in**

All governors should opt-in to this federal scholarship tax credit. To that end, the following steps should be considered to ensure potentially reluctant or non-supportive governors opt-in to the federal school choice law to benefit their state's children in K-12 education.

- **Coalition building.** Just as a coalition of national and state-based organizations and influencers was established and expanded to advocate for congressional enactment of school choice, state-by-state coalitions of organizations and leaders need to come together to advocate for the governor to opt the state in. Examples of organizations could include, but not be limited to:
  - Religious and private school organizations;
  - Religious associations and affiliated entities, including dioceses, churches, synagogues, mosques, and affiliated charities;
  - Immigrant advocacy groups;
  - Non-teacher labor unions; and
  - Public and charter school organizations of superintendents, school boards and principals.
- **Parent and grassroots activism.** Organizations should generate member and parental constituent contact of the governor and state legislators, the latter of whom can be enlisted to pressure the governor.
- **Involve common supporters.** Supporters of and donors to interested organizations may overlap with supporters of the governor and should be recruited to get involved.
- **Generate earned and paid media.** Articles, social media, media events and paid advertising should be considered to elicit public support and public pressure on the governor to opt-in to enable the state's children to access schools of choice made possible by the federal scholarship tax credit. Importantly, this aspect of any advocacy campaign shines a public spotlight on the governor, designed to make it more difficult to refuse participation of the state's taxpayers to benefit the state's children.

Please note that the U.S. Treasury Department must still issue guidance for these provisions of the tax code and this information is not expected until mid-to-late 2026. For more information or questions, please contact Invest in Education at [coalition@investineducation.org](mailto:coalition@investineducation.org).