Educational Choice for Children Act

(Bill #s S.120 & H.R.531)

Impact on Scholarship Granting Organizations

Proposed legislation in the U.S. Congress entitled the *Education Choice for Children Act* (ECCA) would expand education freedom for approximately two million or more students throughout the nation. This legislation would do so by making scholarship granting organizations (SGOs) the primary vehicle to expand educational opportunities and access.

Specifically, the ECCA would create a new tax credit incentive for individuals and businesses to increase charitable donations to SGOs to fund scholarship awards for students in any grade level from kindergarten through twelve. The total annual federal tax credits would be $10 billion, and up to 10 percent of donations may be used toward administrative expenses by the SGO.

The magnitude of this tax incentive would exponentially increase private scholarship funds for K-12 students awarded by existing and new SGOs, including by enabling more lower to middle-income taxpayers to become donors. The expected higher volume of charitable giving also will bring administrative challenges for SGOs – in particular, if any of their program criteria are at variance with federal requirements contained in the ECCA. For example, some existing state-level SGOs may not already impose a household income ceiling, while the ECCA income limit would include middle-income levels and require participating SGOs to verify the household income of scholarship applicants.

This legislation contains minimal, basic requirements for SGOs to receive federal tax-credited donations and retains maximum autonomy for the SGOs to determine program criteria for awarding scholarships for tuition and/or other qualified expenses. The ECCA legislative provisions that govern SGOs are outlined below.

- Basic Requirements for SGOs:
  - Must be a not-for-profit entity pursuant to section 501(c)(3) of the Internal Revenue Code but cannot be a private foundation.
  - Have as its substantial (i.e., primary) purpose the awarding of scholarships for eligible expenses to multiple students and offer more than a single school from which parents can choose to enroll their child. Donations for K-12 scholarships and related expenses must be kept separate from all other organizational funds.
  - Verify annual household income for applicants for a scholarship, which cannot exceed more than 300 percent of the median household income (not poverty threshold) in the respective geographic regions as established by the U.S. Department of Housing and Urban Development.

- Conduct an annual audit by an independent certified public accountant.
- Provide a preference in the awarding of scholarships for prior-year recipients and siblings of scholarship recipients.
- Prohibit the designation of donations for a particular student.
- May use up to 10 percent of donations for administrative expenses.
- Allow carryover to the following tax year up to 15 percent of donations for scholarship awards and up to two years to disburse donations to ensure continuity for existing students and protect against a subsequent-year drop-off in contributions.
- SGO failure to award sufficient scholarships from donations received would subject it to disqualification from receiving federal tax-credited donations.
- SGOs currently operating in a state with an existing tax credit scholarship program are deemed qualified to participate under this federal legislation.

- Eligible Use of Scholarships. SGOs may determine their respective scholarship amounts and use, which may include school tuition, tutoring, fees, curriculum needs, technology, special education services, and other expenses consistent with permissible expenses pursuant to section 529(e) of the Internal Revenue Code for qualified tuition programs.

- Eligible students. Students who would be in any elementary or secondary education setting, including homeschool, are eligible to receive a scholarship, provided they reside in households with incomes at or below 300 percent of the median income level in the respective metropolitan or non-metropolitan area as determined by the U.S. Department of Housing and Urban Development pursuant to section 42 of the Internal Revenue Code.

- School and SGO autonomy. The ECCA legislation contains provisions to prohibit governmental control, mandates, or encroachment over SGOs that receive contributions or schools that educate student scholarship recipients. Faith-based SGOs and schools also can fully participate, as they cannot be excluded from enrolling scholarship recipients.

- Administration & Amount of Tax Credits.
  The tax credit would be a non-refundable credit against federal taxes on a dollar-for-dollar basis for donations to SGOs, applied in the following manner: up to 10 percent of an individual income taxpayer's adjusted gross income or $5,000, whichever is higher; and up to five percent of a corporation's taxable income. In addition:
  - Up to $10 billion in annual tax credits are available to taxpayers, which would be administered by the U.S. Department of Treasury by creating a web-based portal and made available on a first-come, first-serve basis, akin to the process administered in several states with tax credit scholarship programs.
  - SGOs would have to register with the Treasury Department to be listed on this web portal as an eligible recipient of tax-credited charitable donations.
  - This $10 billion annual cap would automatically increase by five percent in the event allocations exceed 90 percent of the limit in a given year.
  - Each state has a minimum $20 million annual allocation of tax credits for resident individuals and businesses to donate to SGOs.