

# **Federal Vouchers, Treasury Regulations, and State Flexibility**

## **Governors Beware: The Voucher Advocates in DC Are Not Serious About Returning Education to the States**



Kevin G. Welner  
University of Colorado Boulder

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**National Education Policy Center**

School of Education  
University of Colorado Boulder  
[nepc.colorado.edu](http://nepc.colorado.edu)

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### NEPC Staff

Faith Boninger  
Publications Manager

Elaine Duggan  
Production Design

Alex Molnar  
NEPC Director

Kevin Welner  
NEPC Director

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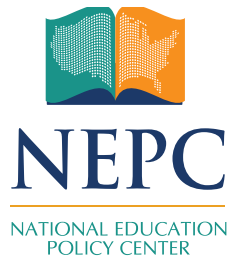
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The 2025 Reconciliation Act (which President Trump dubbed the “One Big Beautiful Bill” or OBBB) includes a provision that creates 100% tax credits for individual taxpayers who send up to \$1,700 to “Scholarship Granting Organizations” (or SGOs). This provision is generally referred to as the *federal school choice* program, since the Trump administration and congressional Republicans were primarily interested in the element allowing SGOs to use the resulting revenue to pay for private-school tuition. The program begins in January 2027, and voucher advocates have been very active in promoting this private-school tuition element.

Under the OBBB, nonprofit SGOs in states opting into the program are authorized to pool the donated money and then hand out “scholarships” for students’ “qualified elementary or secondary education expense[s].” This is limited to the expenses allowed for Coverdell Savings Accounts,<sup>1</sup> which are tied to school-related needs, such as tuition, fees, and academic tutoring; special needs services in the case of a special needs beneficiary; books, supplies and other equipment; computer technology, equipment, and Internet access for the use of the beneficiary; and, in some cases, room and board, uniforms, transportation, and extended day (after-school) programs.

Soon after the law’s passage, supporters of private-school vouchers began lobbying for states to opt in to the tax credit program. The bill, they pointed out, was written to be flexible and to allow each participating state to add requirements, such as an-

ti-discrimination rules, that shape the program in ways consistent with that state's values and needs. Florida Sen. Rick Scott,<sup>2</sup> for example, noted that "[S]tates that opt in to the program can set their own requirements for scholarship-granting organizations, meaning programs can target funding scholarships for poor, working-class, and underserved communities." Fordham's Michael Petrilli<sup>3</sup> similarly argued:

There's no excuse for blue states that want to get to a "yes," especially since jurisdictions can set their own requirements for scholarship-granting organizations. They can target their state's program on poor and working-class families. They can also add requirements that participating students take standardized tests, allowing comparisons with traditional public schools.

Writing in the opinion section of *The Washington Post*, Michelle Dimino of Third Way<sup>4</sup> joined in:

Opting in gives states a significant opportunity to shape what the program looks like. Participating states will approve which organizations can give out scholarship funds. In doing so, they can also set state-specific rules for those groups, such as requiring data collection, performance reporting and nondiscrimination safeguards.

This idea of ensuring that each state could implement the program in ways that allow all possible flexibility is consistent with the Trump administration's vociferous embrace of "returning education quite simply back to the states where it belongs."<sup>5</sup> The President's March 20, 2025 Executive Order titled, "Improving Education Outcomes by Empowering Parents, States, and Communities" similarly asserts the administration's commitment to "return authority over education to the States and local communities."<sup>6</sup>

The flexibility approach appeared to be having some political success. Democratic North Carolina's governor, Josh Stein,<sup>7</sup> explained his veto of a bill that would have preemptively opted his state into the program this way:

Cutting public education funding by billions of dollars while providing billions in tax giveaways to wealthy parents already sending their kids to private schools is the wrong choice . . . However, I see opportunities for the federal scholarship donation tax credit program to benefit North Carolina's public school kids. Once the federal government issues sound guidance, I intend to opt North Carolina in so we can invest in the public school students most in need of after-school programs, tutoring, and other resources.

Stein's veto message conditioned North Carolina's participation on whether the state can regulate the program in ways that are consistent with the state's values and

needs. If Treasury does not issue “sound guidance,” then the state will not participate.

Unfortunately, the U.S. Treasury Department rulemaking is likely to deny states the promised flexibility, notwithstanding the administration’s rhetoric about “returning education to the states.” While the law’s ardent supporters may want Democratic governors to participate, they don’t want to give them the flexibility permitted by the law itself.

Facing this likelihood that the Treasury Department rules will limit their flexibility, three Democratic governors (in Oregon, Wisconsin, and New Mexico) have already announced that they will not opt in.

### **The Lobbying is Well Underway**

Some readers may have recently seen a series of short articles published in *Education Next*,<sup>8</sup> a publication that systematically advocates for school vouchers. The series is titled *How Should The New Federal Scholarship Tax Credit Be Regulated?*, with the subhead: “Treasury Department rulemaking could make or break OBBBA’s school choice provision.” The articles are written by five voucher activists (“We asked five school choice proponents to advise the treasury secretary on what those regulations should say”). They collectively (four of the five<sup>9</sup>) describe regulations that would ensure that state governors don’t stand in the way of promoting voucher growth in a largely deregulated, free-market environment.

The American Enterprise Institute similarly weighed in<sup>10</sup>: “Arguably, the most important and time-sensitive issue that the Treasury must clarify is that the bill itself does not give states the power to add requirements on SGOs or schools, other than what is explicitly outlined in statute.”

There is every reason to believe that the *EdNext* and AEI authors reflect, and are helping to shape, the views of Treasury’s regulation-writers.

### **State Leaders Should Beware**

The tax-credit scholarship approach outlined in the OBBB leaves open a wide range of questions. For example, the legislation includes no lower or upper bound on the amount of money that an SGO could send to any given student. Unclear wording in the law also creates uncertainty about whether a married couple filing jointly has a tax-credit limit of \$1,700 or \$3,400.

These and other sloppy elements in the statutory language will eventually be resolved. However, the key issue for state leaders, particularly the governors who will make the opt-out or opt-in decision in most states, involve whether they can shape



the program as it is implemented in their states. Governors will want to know for instance if they can:

1. Place requirements on SGOs involving reporting, governance, transparency, access, non-discrimination, profiteering, and prioritization of students with greater need;
2. Require that schools and other vendors who are funded through the program be accessible to students and not engage in discrimination against protected groups of students, including members of the LGBTQ+ community;
3. Put quality-control policies in place to weed out the lowest-quality of these vendors; and/or
4. Limit the program to just one or two of the Coverdell categories, ideally research-based options such as high-impact tutoring and after-school programs.

The “sound guidance” that Gov. Stein hopes to receive from the Treasury Department could provide states with the flexibility to do all of these things. The voucher-advocacy community is, however, pushing hard for regulations that slam the door on any approach that does not further the growth of largely unregulated voucher programs. If they succeed, this should foreclose participation by Gov. Stein and even by governors like Pennsylvania’s Josh Shapiro and Colorado’s Jared Polis who have expressed interest in vouchers in the past.

### **The Problems with Today’s Voucher Policies**

Research<sup>11</sup> on the academic achievement effects of today’s large-scale voucher programs is devastating, particularly for students’ mathematics outcomes. Louisiana’s private-school voucher program resulted in a 0.4 standard deviation drop in math scores, and the test-score decreases by voucher students in Indiana and Ohio were also severe. The academic harms attributable to these voucher programs are on par with COVID-19 and Hurricane Katrina.<sup>12</sup> Additional concerns for states rejecting vouchers include issues of equitable access and about students losing the protections of civil rights, anti-discrimination, and special-education laws—as well as short- and long-term harms to the public schools that serve most students.

According to the National Coalition for Public Education,<sup>13</sup> voucher proposals have been put to voters 17 times since 1970, and vouchers have been rejected each time (some of these are repeats—e.g., California rejected two initiatives and Colorado rejected three). State legislators in many of these same (and other) states have also repeatedly rejected voucher proposals. Leaders of these states cannot respectably implement vouchers into their states, given citizen rejection.

For such states that have rejected private-school vouchers in the past, concerns

about equity and quality are among the most salient. Those equity issues include the following: (1) most anti-discrimination protections<sup>14</sup> do not follow students when they move to private schools, even with a taxpayer subsidy, unless the law specifically attaches those protections; (2) even when the law does specifically attach those protections, religious private schools are currently asserting<sup>15</sup> a free-exercise right to engage in faith-motivated discrimination<sup>16</sup>; (3) protections for students with disabilities provided by the Individuals with Disabilities Education Act similarly do not extend to private schools, even with a taxpayer subsidy<sup>17</sup>; and (4) existing programs funded through tax-credited donations have resulted in the rich-get-richer problem whereby most donations are made and stay within wealthier communities, and this problem extends to programs funding opportunities for public-school students.<sup>18</sup> Any leaders of a non-voucher state considering opting into the federal SGO program—including the subsidy for private-school tuition—should first build a system around the program to protect against these equity problems.

Quality issues begin with the findings of voucher research noted earlier: The startling academic harms of vouchers have been well documented.

Other quality issues are related to the lack of regulation within the private-school sector. Public-school laws and regulations concerning key areas like teacher qualifications, curriculum, admissions/access, accountability, and transparency do not apply to private schools, except to the extent that a voucher law may impose specific requirements on a school's acceptance of the taxpayer funding. As noted above, however, the regulation of private religious schools may face legal challenges under the Free Exercise Clause, with at least<sup>19</sup> two<sup>20</sup> such legal challenges already ongoing.

One final but important concern is that voucher policies have tended to start small and with targeted beneficiaries (e.g., students with disabilities) but then expand and grow with each new legislative session—notwithstanding the terrible academic outcomes noted above. States that have stood firm on their commitment to only fund public-school education may be justifiably wary of creating this opening for voucher expansion. What begins as a federally funded program could easily grow into state subsidies.

### **Suggested State Approach**

Opting into the SGO program will necessarily come with very real risks and downsides. The approach taken by the governors of Oregon, Wisconsin, and New Mexico is the wisest and safest approach for protecting those states' students and their public schools.

But for state leaders who are tempted to opt in, that decision could be publicly announced as conditional on the Treasury regulations allowing the state the flexibil-

ity to include specified access, quality, and non-discrimination protections for the state's students. If the federal implementation of the law does not allow for all these protections, then that opt-in is void and/or will not be pursued. Relatedly, the state may announce that if the Treasury Department of the current administration declines to allow this approach, the state will wait for new regulations under the next president and will opt in as soon as the law allows the state to serve all its students, fairly and with protections for good governance. In that scenario, if the Treasury regulations deny state flexibility, the state would not be permanently refusing to opt into the program; it would instead announce a year-to-year delay designed to get an acceptable policy in place.

In sum, the federal scholarship tax credit may look to some state leaders like an opportunity to secure additional resources for students, but the risks are profound. The structure of the law, coupled with the likely direction of Treasury rulemaking, points toward a program designed not to empower states but to constrain them—pushing states into a rigid, federally controlled voucher system that undermines educational equity and quality and presents long-run threats to the fiscal stability of public schools. State leaders would be wise to resist pressure to opt in or, at least, to insist on guaranteed flexibility to safeguard access, quality, transparency, and non-discrimination. Anything less would amount to ceding state authority to Washington while exposing students and taxpayers to the well-documented harms of unregulated voucher programs.



## Notes and References

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