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Report to Congressional Requesters

September 2019

PRIVATE SCHOOL CHOICE

Accountability in State Tax Credit Scholarship Programs

Accessible Version

GAO-19-664

GAO Highlights

Highlights of GAO-19-664, a report to congressional requesters

September 2019

PRIVATE SCHOOL CHOICE

Accountability in State Tax Credit Scholarship Programs

Why GAO Did This Study

All TCS programs are state programs. States develop program policies and requirements, including establishing the roles and responsibilities of SGOs and participating private schools. The President's fiscal year 2020 budget request included a proposal for federal tax credits for donations to state-authorized SGOs. GAO was asked to review key characteristics related to accountability in state TCS programs that can fund K-12 educational expenses.

This report examines (1) key requirements state TCS programs have chosen to establish for SGOs, (2) key requirements for private schools participating in state TCS programs, and (3) how selected states implement TCS programs and assess whether SGOs and participating private schools are following key state requirements.

GAO identified key requirements states may choose to establish related to accountability for SGOs and schools based on relevant research and prior work. GAO also reviewed program documents from all 22 TCS programs to identify whether they had these key requirements as of school year 2018-2019 and then verified this information with state program officials. GAO did not conduct an independent review of state laws and regulations. GAO visited Arizona, Florida, and Pennsylvania, which have the largest TCS programs. In each of these states, GAO reviewed program documents and interviewed officials at state agencies and staff at selected SGOs and private schools (selected to provide variation in size and other characteristics).

View GAO-19-664. For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or nowickij@gao.gov.

What GAO Found

State tax credit scholarship (TCS) programs—programs that offer state tax credits for donations that can fund scholarships for students to attend private elementary and secondary schools—have established various key requirements for the scholarship granting organizations (SGO) that collect donations and distribute awards. For example, all 22 TCS programs in operation as of January 2019 require SGOs to register with or be approved by the state and limit the percentage of donations they can use for non-scholarship expenses. In addition, almost all of these programs—which received over $1.1 billion in donations and awarded approximately 300,000 scholarships in 2017—also require SGOs to undergo annual financial audits or reviews (19 programs). Fewer programs have requirements about SGO fundraising practices (9 programs) or the qualifications of SGO leadership personnel (10 programs), such as restrictions on officials having previous bankruptcies.

States also have various key requirements that apply to private schools that enroll students with TCS scholarships. For example, private schools in most of the 22 programs must follow certain academic guidelines related to curriculum content (18 programs) and instructional time (19 programs), and have staff undergo background checks (18 programs). Schools in fewer programs are required to conduct academic testing (11 programs), ensure their teachers have specified qualifications (12 programs), or undergo an annual audit or financial review (4 programs).

Images of Three Private Schools That Participate in State Tax Credit Scholarship Programs

Source: GAO. | GAO-19-664

The three states with the largest TCS programs—Arizona, Florida, and Pennsylvania—implement and oversee their programs in different ways. In all three states, state agencies administer the tax credits while SGOs are generally responsible for managing donations and awarding scholarships; the details of these processes varied based on the requirements of each program. For example, Arizona and Pennsylvania's programs allow donors to recommend that funds go to specific schools, which can affect how SGOs solicit donations and award scholarships. Florida does not permit recommendations. All three states require SGOs to report on operations and undergo annual financial audits or reviews, while the states differ in how participating private schools are overseen. Florida's TCS programs use multiple monitoring methods, while all Arizona programs and one of two Pennsylvania programs generally rely on SGOs to confirm that schools comply with program requirements.

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Abbreviations

IRS	Internal Revenue Service
SGO	scholarship granting organization
SY	school year
TCS	tax credit scholarship

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

September 24, 2019

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Sheldon Whitehouse
United States Senate

State tax credit scholarship (TCS) programs offer state tax credits for donations that can fund scholarships for students to attend private elementary and secondary schools.[1] Individuals or businesses donate to scholarship granting organizations (SGOs) that then award scholarship funds to eligible students.[2] All TCS programs are state programs; there are no federal TCS programs.[3] States develop their TCS program policies and requirements, including establishing the roles and responsibilities of SGOs and participating private schools. As of January 2019, 17 states operated 22 TCS programs, receiving over $1.1 billion in donations and

[1]Some states use tax credit scholarship programs to fund preschool, career and technical education, or public school initiatives. Such uses are outside the scope of this review.

[2]Eligible donors can receive tax credits on their donations that reduce the amount they owe in state taxes by the full or a partial amount of their donation, depending on each program's rules. For more details about TCS program policies for individual and business donors, see: GAO*, Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs*. GAO-18-679 (Washington D.C.: September 18, 2018). For the purposes of this report, we use the term "Scholarship Granting Organizations" or its acronym "SGO" to refer to all such organizations. Different states use different terminology for SGOs, such as "Scholarship Granting Organizations" and "School Tuition Organizations."

[3]For recent changes to federal regulations on charitable contributions and state and local tax credits, see Contributions in Exchange for State or Local Tax Credits, 84 Fed. Reg. 27,513 (June 13, 2019).

awarding approximately 300,000 scholarships during 2017, according to state-reported data.[4]

TCS programs are one type of private school choice program that states have established to help families fund private school education. Other types of private school choice include voucher programs and education savings account programs, on which GAO reported in 2016 and 2017.[5]

While TCS programs serve a relatively small number of students nationwide compared to traditional public schools, promoting school choice options—both private and public—through a variety of spending and tax expenditure programs continues to be a topic of national debate. Although no federal TCS program exists, bills to authorize federal tax credits for contributions to SGOs have been introduced in recent years. In addition, the President's fiscal year 2020 budget request included a proposal for federal tax credits for donations to state-authorized SGOs. You asked GAO to review accountability in state-administered TCS programs.

This report examines: (1) key requirements state TCS programs have chosen to establish for SGOs, (2) key requirements for private schools participating in state TCS programs, and (3) how selected states implement TCS programs and how they assess whether SGOs and participating private schools are following key state requirements.

[4]This report includes programs operating in January 2019 and describes state TCS program requirements as of school year (SY) 2018-2019. Accordingly, programs that were not operating in January 2019 and any modifications to program requirements scheduled to take effect in future years, are not included in this review. In December 2018, the Supreme Court of Montana held that Montana's TCS program was unconstitutional under the state constitution. An appeal of this decision is currently pending before the U.S. Supreme Court. We did not include Montana's program in our report because it was under judicial review at the time of our review. In most cases, information about donation amounts is for calendar year 2017 and information about scholarship amounts is for SY 2017-2018. These data are the most recently available among the 18 of 22 programs that were operating in 2017 and published or provided GAO with information. See Appendix I for information about scholarships and donations by program.

[5]See GAO, *School Choice: Private School Choice Programs are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students,* GAO-16-712 (Washington D.C.: August 11, 2016). *GAO, Private School Choice: Federal Actions Needed to Ensure Parents are Notified about Changes in Rights for Students with Disabilities,* GAO-18-94 (Washington D.C.: November 16, 2017).

To identify key requirements that states sometimes choose to establish for SGOs and schools, we reviewed relevant research—including our past work—on how states structure and oversee their private school choice programs, as well as research on nonprofit management.[6] By "key requirements," we mean requirements we identified as likely to be used by multiple programs, but the list is not meant to be exhaustive.[7] We grouped the requirements into the broad categories of financial, administrative, and scholarship award requirements for SGOs and academic, administrative, and financial requirements for schools.[8] To determine which of these key requirements states chose to use for SGOs and schools in each TCS program as of school year (SY) 2018-2019, we reviewed program documents from all 22 TCS programs operating in January 2019 and sent our findings to officials from each state program for verification.[9] GAO did not conduct an independent review of state laws and regulations and is not evaluating the efficacy or appropriateness of how states design or implement requirements.

[6]For previous GAO work on private school requirements in voucher and education savings account private school choice programs, see GAO-18-94.

[7]When reviewing state TCS programs to determine whether they have the key requirements we identified for participating private schools, we included states that have these requirements for all private schools in the state, in addition to those that have these requirements specifically for private schools participating in the TCS program. In some cases, TCS program requirements for participating schools may apply to some types of schools and not others, or there may be several pathways to participate in the program, with differing requirements. We are reporting requirements that apply to either some or all participating private schools.

[8]The categories for SGOs and schools are not identical due to the differing roles SGOs and schools have within TCS programs. For a complete list of the key SGO and school requirements identified by GAO, see figures 2 and 6.

[9]When verifying school requirements with state officials, we contacted both state officials in the offices that administer the TCS programs as well as officials responsible for overseeing general state requirements for private schools, as applicable. In three states, officials did not fully respond to GAO's request for verification of TCS program requirements. In Oklahoma, state officials told us that state agencies had limited to no oversight of SGOs and schools in TCS programs and therefore declined to comment on the accuracy of information about some requirements for these entities. State officials in Georgia stated that they have responsibilities related to SGOs, but the Georgia Department of Education told us they did not have oversight responsibilities related to TCS program requirements for schools. South Dakota officials did not respond to our request for information about SGO or school requirements specific to the TCS program, but did respond to requests for information about general private school requirements. For these three states, additional GAO analysts reviewed program documentation to further confirm the accuracy of the information. This further analysis did not involve any independent legal analysis of state laws and regulations.

To identify how selected states implement TCS programs and how they assess whether SGOs and private schools follow program requirements, we visited the three states with the largest TCS programs—Arizona, Florida, and Pennsylvania—and conducted in-depth reviews of their TCS programs. These three states were selected because they had the largest TCS programs at the time of our study in terms of both donations and scholarships awarded. Combined, these programs comprised approximately 80 percent of donations received and TCS scholarships awarded nationwide in 2017.[10] For each of the three states, we reviewed program documents and spoke with (1) officials at relevant state agencies, (2) staff at selected SGOs, and (3) staff at selected private schools to discuss TCS program operations and how the states monitor SGOs and schools regarding program requirements.[11] The information gathered in the three selected states is not generalizable to all tax credit scholarship programs.

We conducted this performance audit from October 2018 to September 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[10]See Appendix I for more information about scholarship and donation amounts, including each program's specific reporting timeframes. These percentages are based on the 18 programs that were (a) operating in 2017 and (b) had information available about scholarship awards and donation amounts.

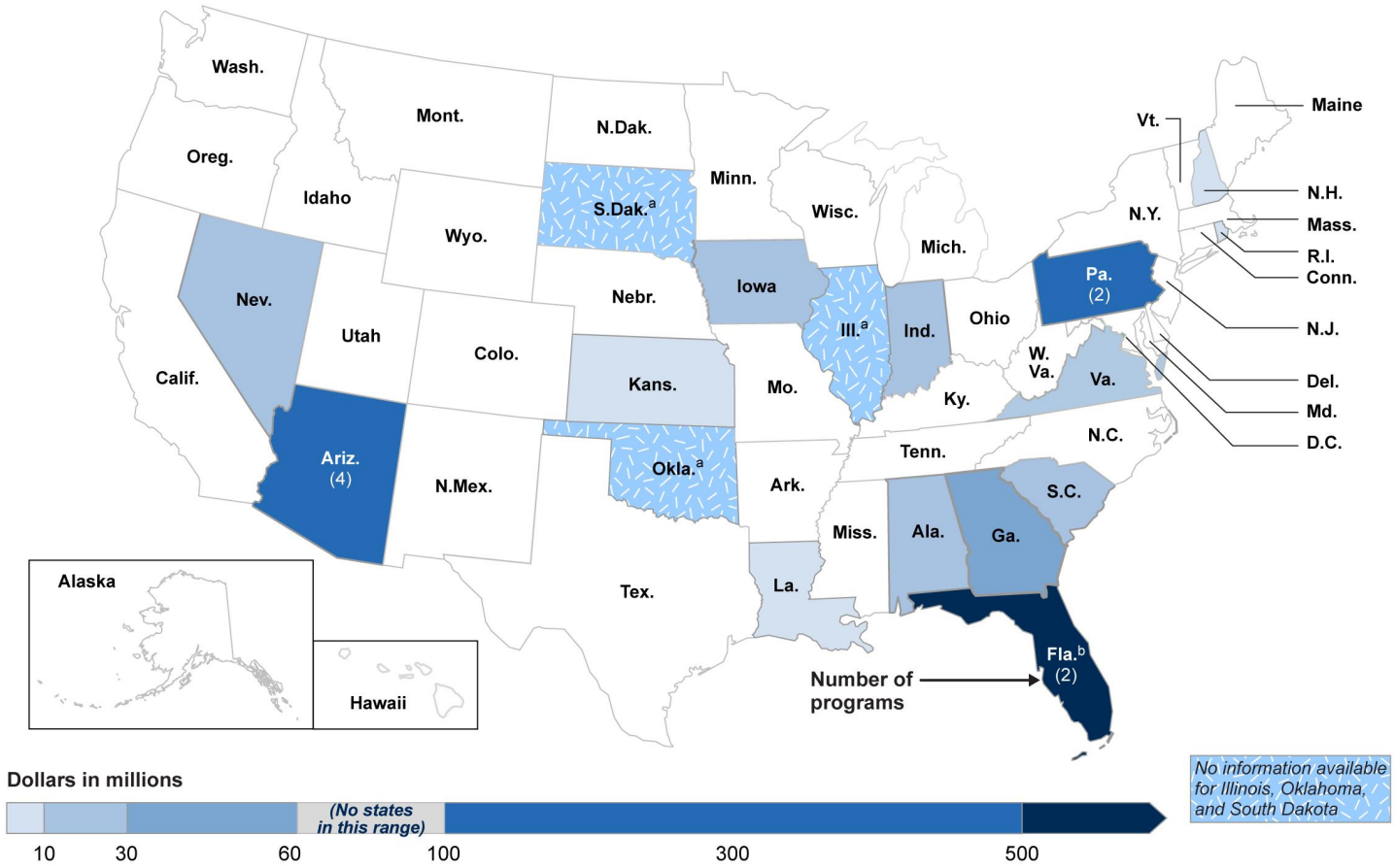
[11]Arizona, Florida, and Pennsylvania provided variation in terms of the length of time programs had been in operation; the types of state agencies that administer the programs; and the number of SGOs that participate in the programs. We interviewed a total of eight SGOs in these three states, selected for variation in the amount of yearly donations received and the number of schools served by the SGO. We also included at least one SGO across the three states that: serves rural schools, serves urban schools, serves as both an SGO and a school, and accepts recommendations of scholarship recipients from donors. We interviewed six schools selected for variation in: the proportion of scholarship to non-scholarship students; the size of the student population; the cost of tuition; and urban and rural locations. We also included at least one school for students with disabilities.

Background

The 22 TCS programs covered by our review varied widely in total donations and number of scholarships awarded. For example, total donations during 2017 ranged from $854,326 in New Hampshire's program to approximately $623 million in Florida's largest program (see fig. 1 and app. I).[12] Of the 17 states operating these programs, Arizona, Florida, and Pennsylvania operate the largest programs in terms of both dollars donated and number of scholarships awarded. These are also the only three states that operate multiple programs per state.

[12]2017 data was the most recent available data across state TCS programs at the time of our review.

Figure 1: States with Tax Credit Scholarship (TCS) Programs Operating as of January 2019, by Total Donations Received during Calendar Year 2017



Sources: GAO analysis of data from state TCS programs; Map Resources (map). | GAO-19-664

Note: In most cases, the information about donation amounts presented in this figure is for calendar year 2017. Florida, Pennsylvania, and South Carolina reported information by state fiscal year (July 1, 2017-June 30, 2018) and Indiana, Nevada, and Virginia reported information for school year 2017-2018. Florida officials also stated that the reported information on donations is approximate. The donation amounts for Arizona and Pennsylvania represent the combined totals for all programs in each state.

[a]The Illinois Invest in Kids Tax Credit Scholarship Program was operating by January 2019, but had not begun accepting donations during calendar year 2017. Oklahoma and South Dakota officials did not provide information about donation amounts.

[b]The information provided above is for the Florida Tax Credit Scholarship Program, which received approximately $623 million in donations during state fiscal year 2017-2018, according to state records. Florida's Hope Scholarship Program was operating by January 2019, and had not begun receiving donations in calendar year 2017.

Decisions about whether to develop and operate a TCS program—as well as how to structure requirements—are at the discretion of each state;

there is no federal role in establishing these programs.[13] For example, states sometimes choose to establish requirements that SGOs and schools must follow as a minimum condition for participation. Since scholarships are funded through donations rather than state appropriations, the financial impact to states from TCS programs primarily occurs through forgone revenue resulting from the associated tax credits.[14]

Various state agencies, SGOs, and participating private schools generally all play a role in administering state TCS programs, with the specific division of responsibilities varying by program.

- **State agencies** that are responsible for tax administration, education, or both, generally administer these programs. For example, in some programs, state agencies disseminate information to donors, scholarship students, or the public, and approve SGOs or private schools to participate in the program.
- **SGOs** are tax-exempt organizations that are generally responsible for managing some aspects of the donation process—such as collecting donations—as well as awarding scholarships to students.
- **Participating private schools** educate students receiving tax credit scholarships. They sometimes also facilitate donations or inform parents about TCS scholarship awards. Participating schools can vary in terms of characteristics such as their size, religious affiliation, and whether they focus on specific student populations, such as students with disabilities.

[13]The U.S. Department of Education (Education) has no role in developing, operating, or overseeing state TCS programs. However, Education is responsible for ensuring state compliance with federal grant requirements under the Elementary and Secondary Education Act of 1965, as amended, and the Individuals with Disabilities Education Act. These two laws require public school districts to make “equitable services” available to eligible private school students. Such services can include speech therapy or reading tutors for eligible private school students with disabilities or from low-income areas. See GAO-16-712 and GAO-18-94.

[14]While TCS program scholarships and SGO administrative expenditures are generally funded through tax credit-eligible donations, states may also spend some appropriated funds for state staff to administer TCS programs. In addition to forgone state revenue from tax credits, TCS programs may also decrease some costs to the state or local governments, depending on the circumstances. For example, if students participating in the TCS programs were previously enrolled in public schools, their transition to private schools could decrease some public school costs. The overall impact of these decreased costs and forgone state revenues from the tax credits would depend on many factors.

In September 2018, we issued a report that described state TCS program requirements related to donations and student eligibility for programs operating at the beginning of 2018. In that report, we found that these programs offered tax credits to individuals, businesses, or both that ranged from 50 percent to 100 percent of the donation amount.[15] We also found that most programs set limits on the amount of TCS program donations that could be made per year. In terms of eligibility, we found that TCS programs commonly determined student eligibility based on their household income, with income limits varying widely across programs.

TCS Programs Generally Require Financial Audits or Reviews for Participating SGOs and Prohibit Them from Awarding Scholarships to Only One School

States have established requirements that SGOs must follow as a condition of participation in their TCS programs. See figure 2 for key requirements that some states have chosen to put in place for SGOs.

[15]We collected information on tax credit provisions as of calendar year 2018 and scholarship award requirements as of SY 2017-2018 by reviewing publicly-available program documentation and verifying it with state officials from each program. For more information, see GAO-18-679.

Figure 2: Key Requirements that Some States Have Chosen to Establish for Scholarship Granting Organizations (SGOs) Participating in Tax Credit Scholarship Programs

Financial Requirements

Programs sometimes have requirements for SGOs related to:

- **Limit non-scholarship expenses** to a given percentage of total SGO revenue or donations.
- **Policies for managing funds from donations,** such as keeping separate accounts for scholarship and non-scholarship funds or using related interest on scholarships.
- **Annual financial audit or review.**
- **Surety bonds** to demonstrate fiscal soundness.
- **Conflict of interest policy** or related policies designed to prevent personal financial gain among SGO personnel.
- **Restrictions on sharing resources with schools.**
- **Report on number or amount of donations.**

Administrative Requirements

Programs sometimes have requirements for SGOs related to:

- **State approval or registration to operate as an SGO.**
- **Qualifications of SGO officials,** such as restrictions on previous bankruptcies.
- **Marketing and fundraising practices.**
- **Report on number or amount of scholarships.**

Scholarship Award Requirements

Programs sometimes have requirements for SGOs related to:

- **Working with multiple schools:** prohibit SGOs from awarding scholarships to only one school.
- **Student recommendations:** prohibit SGOs from allowing donors to recommend specific students.
- **School recommendations:** prohibit SGOs from allowing donors to recommend schools.

Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

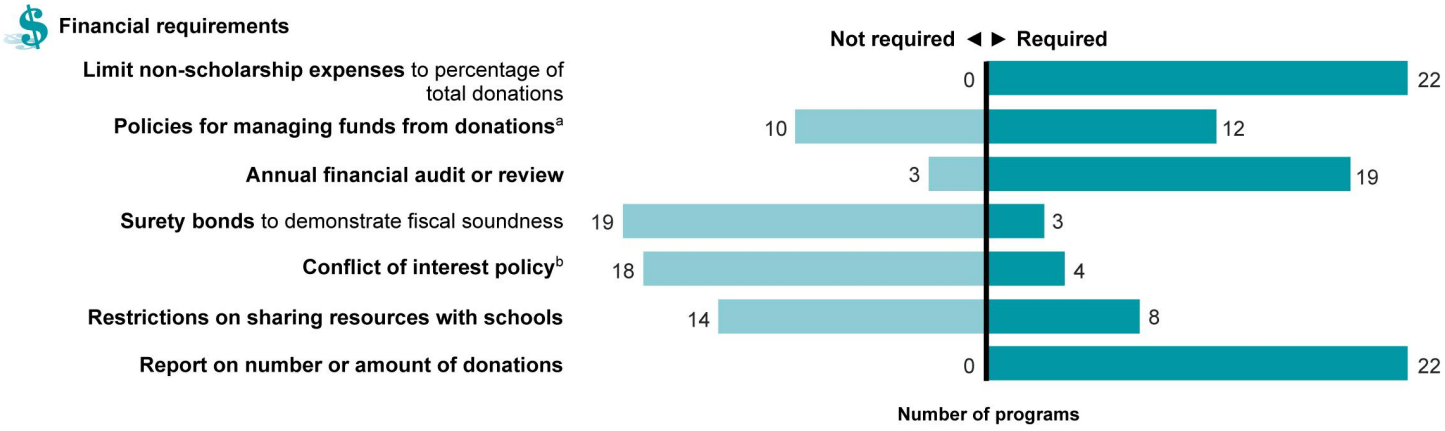
Note: GAO identified these key requirements that states sometimes choose to establish for their TCS programs by reviewing relevant research and program documents. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

Financial Requirements

All TCS programs have financial requirements that limit the percentage of donations that SGOs are permitted to use for non-scholarship expenses—such as staff salaries—and most also require SGOs to undergo annual financial audits or reviews.[16] (See fig. 3.)

[16]As previously discussed, the information we present in this report about program requirements was gathered from our review of program documents and provided to state officials for verification. We did not conduct an independent review of state laws and regulations.

Figure 3: Number of State Tax Credit Scholarship Programs with Key Financial Requirements for Scholarship Granting Organizations (SGOs), School Year 2018-2019



Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Note: This table includes programs that were in operation as of January 2019. GAO identified each state's requirements by reviewing program documents and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

[a]Program requires a SGO to follow policies about managing funds from donations, such as keeping separate accounts for scholarship and non-scholarship funds or using related interest on scholarships.

[b]Program requires a SGO conflict of interest policy or a policy designed to prevent individual financial gain among SGO personnel.

The limit on the percentage of donated funds that SGOs are permitted to use on non-scholarship expenses ranges from 2 percent to 10 percent for 20 of the 22 programs.[17] The other 2 programs—both in Pennsylvania—have a limit of 20 percent. About half (12) of programs also require SGOs to follow rules about how donated funds or related interest are managed and spent. For instance, South Dakota requires SGOs to spend all revenue from interest or investments on TCS scholarships.[18]

[17]Florida requires SGOs to operate for at least three years before they are permitted to use up to 3 percent of donations for non-scholarship expenses.

[18]Other financial management requirements for SGOs sometimes include keeping separate accounts for scholarship and non-scholarship funds and limiting the amount of unused funds that SGOs may carry forward to future years.

Most (19) programs require SGOs to undergo either an annual financial audit or review.[19] Some of these programs require more extensive audits for SGOs that receive donations over a certain dollar threshold (e.g., over $1 million). Three programs require at least some SGOs to submit proof of fiscal soundness, such as a surety bond or letter of credit. For example, to insure against potential financial loss, Florida requires SGOs to submit a surety bond equal to the SGO's unspent donations.

Some programs require SGOs to take steps to guard against conflicts of interest. For example, four programs require SGOs to have a conflict of interest policy or a policy designed to prevent individual financial gain among SGO personnel. For instance, New Hampshire prohibits SGOs from awarding scholarships to children of any SGO employee or to children of any business owner whose business donates to the SGO. About a third (8) of programs prohibit SGOs and participating schools from sharing resources or personnel, while other programs do not include such prohibitions. For example, in Pennsylvania, schools are permitted to operate as SGOs and award scholarships directly to their students.

In addition, TCS programs require SGOs to be recognized as tax-exempt organizations by the Internal Revenue Service (IRS), so they generally are also subject to applicable federal requirements for tax-exempt organizations, such as filing an annual information return or notice with the IRS.[20] In addition, SGOs may be subject to applicable state laws for tax-exempt or non-profit organizations.

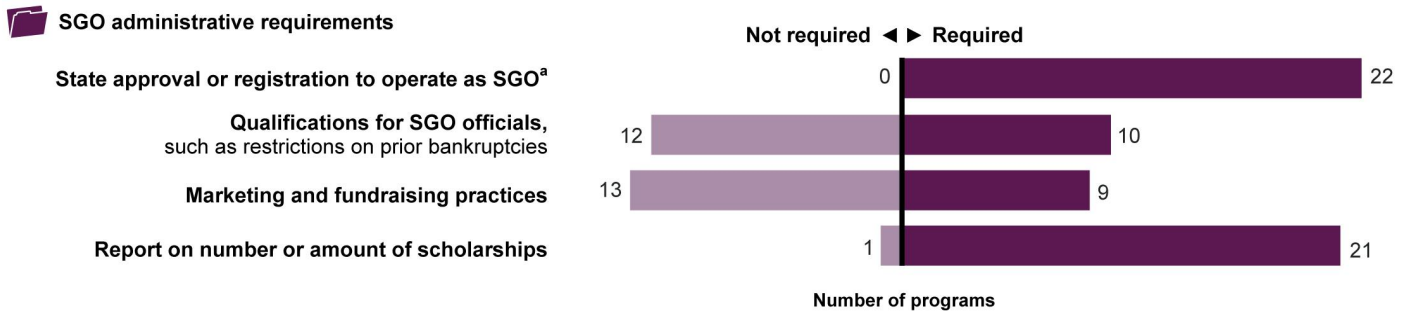
Administrative Requirements

Figure 4 shows the number of state TCS programs that had selected administrative requirements for SGOs.

[19]Two of the three remaining programs that do not require an annual financial audit or review require SGO audits in specific scenarios or less often than annually. Specifically, in New Hampshire, if a state agency receives a complaint that the agency determines warrants further investigation, officials may require an SGO to undergo a financial audit. Oklahoma requires SGO audits every four years.

[20]In all 22 programs, states require SGOs to be recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code, or be in the process of obtaining such a designation.

Figure 4: Number of State Tax Credit Scholarship (TCS) Programs with Key Administrative Requirements for Scholarship Granting Organizations (SGOs), School Year 2018-2019



Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Note: This table includes programs that were in operation as of January 2019. GAO identified each state's requirements by reviewing program documents and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

[a]We included South Carolina as one of the states requiring state registration or approval to operate as a SGO; however South Carolina is different from other states in that its one SGO was established by the state's TCS program authorizing legislation, which provided, among other things, that the SGO be governed by five directors, four appointed by specified members of the state legislature, and one appointed by the governor.

All programs require SGOs to register or receive state approval by, for example, submitting an application to the state or providing documentation showing the SGO is a tax-exempt organization.[21] Slightly fewer than half (10) of programs require SGOs to follow rules about the qualifications of SGO leadership personnel. For instance, Nevada requires the SGO's top board member to sign an affidavit stating that no member of the board of directors or SGO employee has ever been convicted of a felony, among other requirements. Nine of the programs have requirements related to marketing and fundraising practices. For instance, Louisiana requires SGOs to send the state any advertisements so state officials can review the materials.

Almost all (21) programs require SGOs to report to the state the number or total dollar amount of scholarships they awarded. Also, 19 programs require SGOs to report information about the characteristics of

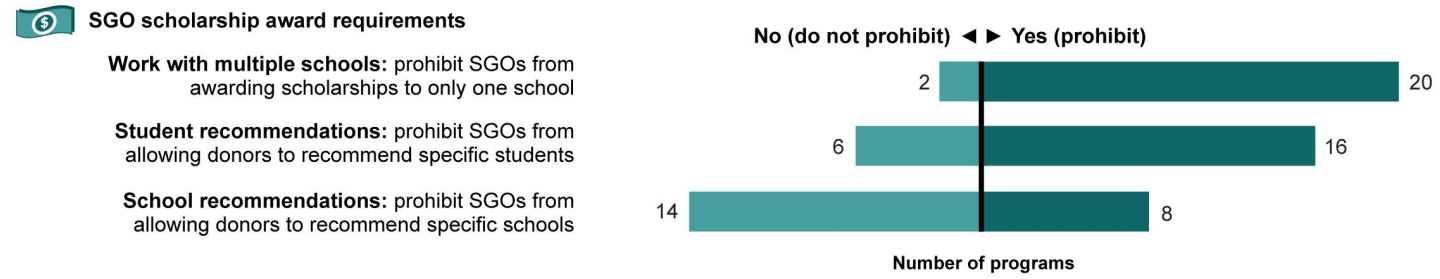
[21]We included South Carolina as one of the states requiring registration or state approval to operate as an SGO; however South Carolina is different from other states in that its one SGO was established by the state's TCS program authorizing legislation, which provided, among other things, that the SGO be governed by five directors, four appointed by specified members of the state legislature, and one appointed by the governor.

scholarship students, such as household income or geographic location. These programs sometimes choose to require SGOs to report individual student-level information or aggregated information for all of their scholarship students combined. For example, Alabama requires SGOs to report identifying information and scholarship amounts for each student to the state. Alternatively, Georgia requires SGOs to report the number of families of scholarship recipients by income group.

Scholarship Award Requirements

Figure 5 shows how many programs had key requirements for SGOs related to scholarship awards. Almost all (20) programs prohibit SGOs from awarding scholarships to only one school. Some of these 20 programs require SGOs to allow students to use their scholarships at any qualified school whereas others allow SGOs to work with a subset of two or more schools.

Figure 5: Number of State Tax Credit Scholarship Programs with Key Awards Requirements for Scholarship Granting Organizations (SGOs), School Year 2018-2019



Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Note: This table includes programs that were in operation as of January 2019. GAO identified each state's requirements by reviewing program documents and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

The majority of programs prohibit donors from recommending that scholarships go to specific students while fewer programs prohibit donors from directing funds to specific schools. More than half (16) of programs prohibit SGOs from allowing donors to recommend that scholarships go to specific individuals, such as students they know personally.[22] About

[22]We did not verify whether donors make recommendations for specific students in programs that did not explicitly prohibit such recommendations.

one-third (8) of programs prohibit SGOs from allowing donors to recommend that scholarship funds be used at a specific school.

Most States with TCS Programs Require Schools to Teach Core Subjects and Meet Minimum Attendance Standards; Few Require Financial Audits or Reviews of Schools

In addition to requirements for SGOs, states with TCS programs also have requirements for private schools. See figure 6 for key requirements that some states with TCS programs have chosen to put in place for schools. Some requirements were specific to schools participating in the TCS program and some requirements were for all private schools, regardless of TCS program participation. We counted programs as having a particular requirement as long as the requirement applied to at least some of the participating private schools.

Figure 6: Key Requirements that Some States with Tax Credit Scholarship (TCS) Programs Have Chosen to Establish for Participating Private Schools

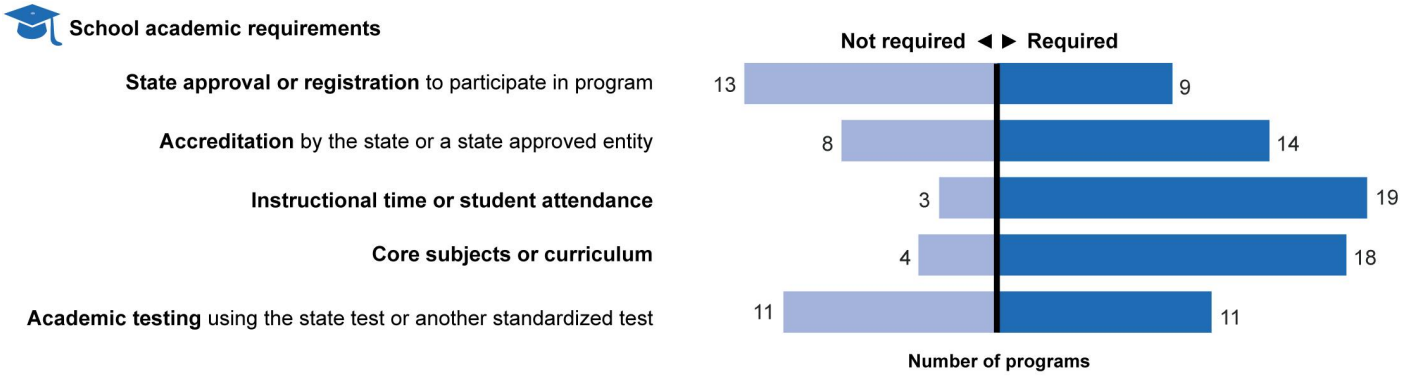
Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

Note: GAO identified these key requirements that states sometimes choose to establish for their TCS programs by reviewing relevant research and program documents. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

Academic Requirements

Programs generally have one or more academic requirements for participating private schools. (See fig. 7.)

Figure 7: Number of State Tax Credit Scholarship Programs with Key Academic Requirements for Participating Private Schools, School Year 2018-2019



Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Note: This table includes programs that were in operation as of January 2019. GAO identified each state's requirements by reviewing program documents and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

About half (9) of the programs require private schools to register or be approved by the state TCS program before their students can receive TCS scholarships. For example, in Nevada private schools must register with the state by completing a form acknowledging that they will follow program requirements. Other programs, such as Georgia's, require SGOs to determine if private schools meet program participation requirements. Separate from any requirements to register with the TCS program itself, over half (14) of the programs require participating private schools to be accredited by the state or another organization, such as a regional accreditation organization. For example, Pennsylvania requires participating private schools to be 1) licensed by the state, 2) accredited by an association approved by the state, or 3) operated by a religious institution.

Private schools participating in most TCS programs are subject to requirements regarding minimum instructional time or student attendance and requirements related to curriculum content or core subjects, such as reading, mathematics, social studies, and science. These requirements may or may not be the same as requirements for all private schools in a

state. For example, Nevada requires all private schools, including those participating in its TCS programs, to provide 180 days of academic instruction per year. South Carolina's TCS program generally requires participating private schools to offer the courses required to receive a high school diploma in the state.[23]

Eleven programs require schools to give academic tests to TCS students. Of these programs, three require participating schools to administer the same test required of public school students and eight allow schools to select among multiple tests. For example, Louisiana requires participating private schools to give TCS students the same state tests in English and math that are used in public schools, whereas Florida allows participating private schools to choose from a state approved list of norm-referenced tests.[24] These 11 programs also require schools to report TCS students' test results to the state, parents, or other entities. For instance, one of Florida's programs requires schools to report test results to a university selected by the state to analyze TCS students' test scores.

Administrative Requirements

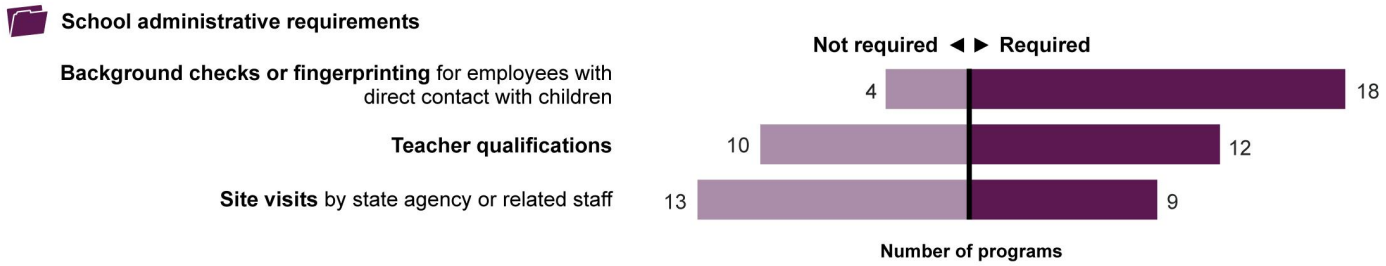
Participating schools are often required to ensure their teachers undergo background checks or meet minimum qualifications, and less frequently required to undergo site visits.[25] (See fig. 8.)

[23]South Carolina state agencies are permitted to waive some or all of these requirements.

[24]Norm-referenced tests are standardized tests designed to compare and rank test takers in relation to one another.

[25]Participating private schools may also be subject to other applicable state and federal laws, which could include requirements related to health and safety, student data privacy, and nondiscrimination.

Figure 8: Number of State Tax Credit Scholarship Programs with Key Administrative Requirements for Participating Private Schools, School Year 2018-2019



Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Note: This table includes programs that were in operation as of January 2019. GAO identified each state's requirements by reviewing program documents and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

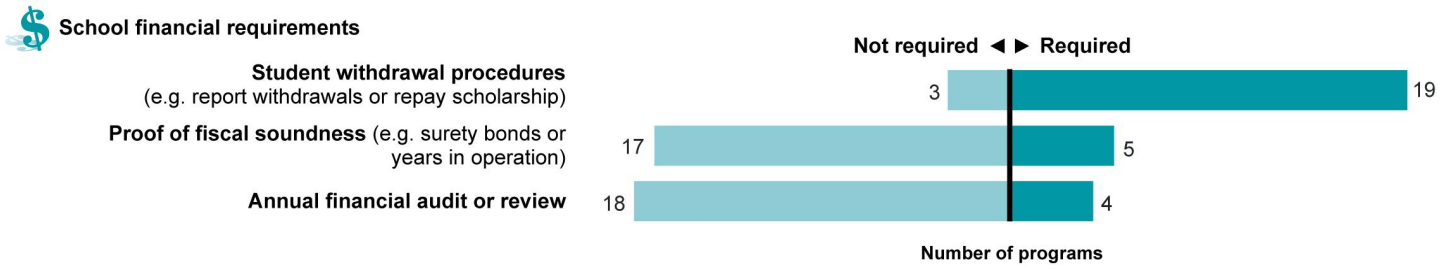
Most (18) programs require participating private schools to conduct background checks or fingerprinting of employees with direct, unsupervised contact with children. Additionally, 12 programs require schools to ensure teachers meet certain qualifications, such as holding a state-issued certificate or a college degree. For example, Alabama requires all private school teachers to hold teaching certificates issued by the state.

Nine of the programs require private schools to permit state or other officials to conduct site visits. In the majority of these programs, site visits are a general requirement for private schools in the state or a component of state accreditation that some or all schools are required to obtain before participating in the TCS program. Across these programs, the frequency of the site visit varies. For instance, Indiana state officials are required to make random site visits to at least five percent of participating private schools each year, while Iowa requires a site visit for all private schools operating in the state at least once every five years.

Financial Requirements

Among the 22 programs, financial requirements for participating private schools are generally less common than academic and administrative requirements. (See fig. 9.)

Figure 9: Number of State Tax Credit Scholarship Programs with Key Financial Requirements for Participating Private Schools, School Year 2018-2019



Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Note: This table includes programs that were in operation as of January 2019. GAO identified each state's requirements by reviewing program documents and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. States can choose to incorporate some, all, or none of these requirements, implement them in different ways, or impose additional requirements not shown here.

Most (19) programs have requirements related to student withdrawals, such as requiring schools to report or repay the scholarship when students withdraw from the school for which the scholarship was originally awarded.[26] For example, Illinois requires schools and SGOs to prorate scholarships for students who transfer to another private school during the school year, while Louisiana requires schools to immediately notify the SGO and state if a scholarship student is no longer enrolled.

Few (4) programs require schools to complete an annual financial audit or review. Among programs with such requirements, Florida requires schools that receive more than $250,000 in scholarship funds to submit the results of a financial audit to the SGO that awarded the majority of those funds. South Carolina requires all schools to include a copy of an audit or other financial review when they initially apply to participate in the program and annually afterwards.

About one-fourth (5) of programs require schools to provide surety bonds or other evidence to demonstrate financial viability.[27] For example, Louisiana requires schools that have operated for fewer than five years and will receive more than $50,000 in TCS funds to either provide a SGO with a surety bond equal to the amount of TCS funds they expect to

[26]The other three programs do not have explicit requirements for participating private schools regarding student withdrawals.

[27]A surety bond could, for example, guarantee the scholarship funds that a participating private school receives from an SGO in the event the school closes.

receive during the school year or other information showing financial viability. Florida requires schools operating for fewer than three years to provide the state with a surety bond equal to the amount of scholarship funds for any quarter.

States with the Largest TCS Programs Have SGOs Manage Key Program Features

SGOs Manage Donations and Award Scholarships while State Agencies Administer Tax Credits in the Three States

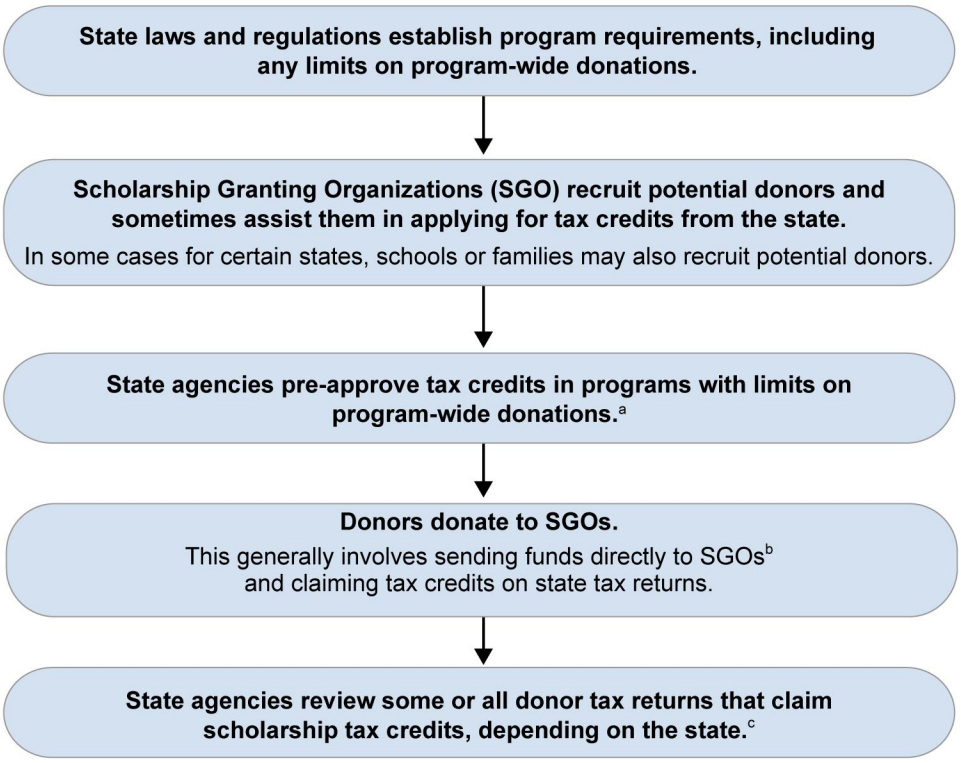
Donations and Tax Credits

In the three states with the largest TCS programs—Arizona, Florida, and Pennsylvania—SGOs are generally responsible for recruiting donors while state agencies administer tax credits.[28] (See fig. 10).[29]

[28]The three selected states collectively have eight TCS programs. Statements in this report referring to “all three states” refer to all eight programs in those states, unless otherwise specified. As of January 2019, Arizona had four programs and Florida and Pennsylvania each had two programs. Florida also has a sales tax credit for tenants of commercial rental properties. This tax credit provides a revenue stream to the Florida Tax Credit Scholarship Program. For the purposes of this report, we are considering this tax credit to be part of the Florida Tax Credit Scholarship Program.

[29]For more details on the various policies and practices regarding donations, scholarship award determinations, and other key program features in each of the three states’ largest programs, see Appendix II.

Figure 10: Summary of Key Steps and Entities Involved in the Tax Credit and Donation Process in Arizona, Florida, and Pennsylvania



Source: GAO summary of tax credit scholarship program documentation and interviews with program officials. | GAO-19-664

Note: GAO identified each state's requirements by reviewing program documents, interviewing program officials, and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations.

[a]Collectively, Arizona, Florida, and Pennsylvania have eight tax credit scholarship programs. Five of these eight programs have program-wide limits and related tax credit pre-approval processes. Arizona's two programs for individual donors and Florida's Hope Scholarship Program do not have program-wide limits and do not require donors to receive state approval before claiming tax credits.

[b]With the exception of one program in Florida, where donors purchasing a vehicle have the option to direct a portion of the sales tax to the Hope Scholarship Program. The dealer, state agency, or county tax collector that receives the contribution must send the donated portion directly to the designated SGO.

[c]Florida and Pennsylvania review all tax returns that claim a scholarship tax credit and Arizona reviews tax returns that claim TCS credits if the tax return is selected for review as part of the state Department of Revenue's general tax audit selection process, according to state officials.

SGOs generally recruit potential donors and sometimes help them apply for tax credits. SGO officials in all three states described ways they solicit donations, such as meeting with representatives from corporations to promote TCS programs or providing banners and pamphlets for private schools to display. In Arizona—where SGOs are permitted to allow donor recommendations for specific schools or students in certain programs—

SGO and school officials described roles for schools or students and their families in soliciting donations. For example, family members of prospective scholarship students may encourage members of their community to donate and recommend their child or child's school, according to officials from a SGO and a school we visited in Arizona. In addition, SGO officials we spoke with in all three states noted that they help donors navigate the process of obtaining tax credits. For example, officials from a SGO in Pennsylvania described how they can fill out the application for tax credit pre-approval as the donor's delegate or review completed applications for errors before donors submit them to the state.

State agencies administer state tax credits based on the rules of each TCS program. Specifically, five of the eight programs in the three states have a maximum total dollar limit on the amount of all scholarship tax credits that can be awarded in a year.[30] In those five programs, the state requires donors to apply for pre-approval of the tax credits to ensure the limit has not been reached and tax credits are still available. In the Florida and Arizona programs that have such limits, state agencies consider all donor applications for tax credit pre-approval on a first come, first served basis.[31] Pennsylvania considers returning donors for pre-approval before considering new donors (while tax credits remain).

State officials in Pennsylvania and Florida described different methods for reviewing donors' tax compliance before and after they file their taxes and claim the TCS tax credit. Specifically, the Pennsylvania Department of Revenue checks for any outstanding tax liability before approving tax credits for the TCS programs and reviews all tax returns that claim TCS credits to ensure the amount of tax credits claimed does not exceed the amount that was pre-approved. The Florida Department of Revenue reviews tax returns that claim a TCS credit to ensure the amount of tax credits used matches the approved amount that was allocated for the donor. Officials from the Arizona Department of Revenue said it does not have a separate tax compliance review process for its TCS credits.[32]

[30]In calendar year 2018, program limits in these five programs ranged from $5 million in Arizona's smallest program to over $698 million in one of Florida's programs (the largest TCS program in the U.S. by amount of donations received).

[31]The two Arizona programs for individual donors and Florida's Hope Scholarship program do not have such limits and the state does not pre-approve tax credits for those programs.

[32]In Arizona, tax returns selected for the general tax audit may include claims for TCS credits and would thus be reviewed as part of the audit.

Scholarship Awards

All three states established scholarship requirements while SGOs managed the scholarship awards process by determining which students are eligible for TCS scholarships, which eligible applicants will receive scholarships, and how much to allocate to scholarship recipients within program limits.[33] In contrast, state agencies have a limited role—or no role at all—in determining the allocation of scholarships among eligible students, according to state and SGO officials in all three states. However, states may provide guidance documents to help SGOs navigate the state's general policies for the awards process.

The number of SGOs awarding scholarships varied across the three states, as did program policies for how those SGOs determine which eligible students receive scholarships. In fall 2017, Florida had two SGOs—one of which awarded 99 percent of scholarships.[34] Meanwhile, Arizona's four TCS programs had between 14 and 60 SGOs each and Pennsylvania's two programs had approximately 190 and 260 SGOs each.[35] In addition, as described in table 1, states varied in their requirements for how SGOs prioritize eligible students, the degree to which SGOs may work exclusively with a subset of schools, and whether SGOs may consider donors' recommendations when deciding which students receive scholarships. Further, because each SGO is responsible for establishing its own procedures for awarding scholarships within program requirements, a TCS program with many SGOs could have substantial variation in how scholarships are awarded.

Table 1: Policies in Arizona, Florida, and Pennsylvania That May Affect How Scholarship Granting Organizations (SGO) Award Tax Credit Scholarships (TCS) to Eligible Students

Types of award policies	Arizona	Florida	Pennsylvania

[33]The states differ in how they define student eligibility; however, as of school year 2017-2018, each of the three states had at least one program with income-based criteria. See GAO-18-679.

[34]In 2017, the Florida Tax Credit Scholarship Program was the only TCS program awarding scholarships in the state.

[35]In Pennsylvania, schools can be approved to operate as SGOs. The number of approved SGOs per program within a given state is not necessarily mutually exclusive because the same SGO may be approved to participate in multiple TCS programs.

Types of award policies	Arizona	Florida	Pennsylvania
Prioritizing eligible students	Two of the four programs require SGOs to consider students' financial need and in one of these programs, SGOs must give priority to students and their siblings on the SGO's waitlist.[a]	In the larger of the two programs, SGOs must give priority to students based on prior scholarship award, household income, or to students who are in foster care.[b]	One of the two programs requires SGOs to give preference to students based on prior scholarship award, household income, or specific characteristics of their school district.
Restrictions on working with a subset of schools	SGOs may work with a subset of schools but must provide scholarships to students at more than one school.	SGOs may not limit scholarships to a subset of schools.	SGOs may work with a subset of schools but in one of the two programs, SGOs must provide scholarships to students at more than one school.[c]
Allowing donors to recommend that their donation go to a specific school	Yes – donors may recommend a school.	No – donors may not recommend a school.	Yes – donors may recommend a school.
Allowing donors to recommend that their donation go to specific students	Donors may recommend a student in two of four programs; donors may not recommend specific students in the other two programs.[d]	No – donors may not recommend a student.	State does not expressly prohibit recommendations of specific students.

Source: TCS program documentation and interviews with state officials. | GAO-19-664

Note: Unless otherwise noted, the requirements in this table pertain to SGOs in a given state, regardless of which state TCS program or programs they participate in. GAO identified each state's requirements by reviewing program documents, interviewing program officials, and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations.

[a]In these programs, the state allows SGOs to set the specific criteria and method for considering students' financial need. Arizona's other two programs for corporate donors do not have guidelines for prioritizing eligible students.

[b]These prioritization procedures apply to the Florida Tax Credit Program, one of two Florida TCS programs. The other program, Florida's Hope Scholarship Program, provides scholarships on a first-come, first-served basis to students who were subjected to an incident of violence or bullying at a school.

[c]In Pennsylvania, private schools that are approved by the state to operate as a SGO must also carry out the responsibilities of a SGO. The Educational Improvement Tax Credit Program in Pennsylvania requires SGOs to award scholarships to more than one school. SGOs may award scholarships to students from affiliated elementary, middle, or secondary school campuses to fulfill this requirement, according to state officials. Pennsylvania's other TCS program, the Opportunity Scholarship Tax Credit Program, does not have the requirement to award scholarships to more than one school.

[d]In Arizona's two tax credit programs for individual donors, SGOs can allow donors to recommend that their donations fund scholarships for specific students, but cannot award a scholarship solely on the basis of donor recommendations.

Prioritizing eligible students: The three states provide varying levels of discretion to SGOs in how they prioritize eligible students when awarding scholarships. For example, Florida's largest program requires SGOs to award scholarships on a first-come, first-served basis with first priority to students who previously received a scholarship, and then to students from lower-income households or who are in foster care; its other program requires SGOs to award scholarships to students on a first-come, first-served basis. Two programs in Arizona and one in

Pennsylvania outline requirements for how SGOs must prioritize among eligible students, while the remaining programs do not. Further, in all four Arizona programs and both Pennsylvania programs, SGOs are permitted to set additional criteria for selecting scholarship recipients beyond requirements set by the state, as long as those criteria align with program rules and existing laws. For example, officials we spoke with at one SGO in Arizona noted that their selection committee considers written narratives from students and their parents about the student's character and academic achievement when prioritizing eligible students, among other factors.

Working with a subset of schools: State policies about partnerships between SGOs and schools can affect which students receive scholarship awards and where students can use those awards. SGOs in Florida award scholarships to students who can then use their scholarship award at any private school that qualifies to participate in the TCS program. In contrast, Arizona and Pennsylvania allow SGOs to partner with subsets of participating schools and award scholarships exclusively to students at those schools. For example, in Arizona and Pennsylvania, some SGO officials noted that the scholarships awarded through their SGO may only be used at partner schools that shared a religious affiliation with the SGO.[36]

Allowing donor recommendations: The TCS programs in the three states also had different rules on whether donors may recommend that scholarships be awarded to particular schools or students. Florida prohibits donors from making scholarship recommendations or designations for specific schools or students. In all Pennsylvania and Arizona programs, donors can recommend or designate donations for specific schools, but SGOs can take different approaches to distributing any such recommended funds. For example, one SGO in Pennsylvania sends recommended donation funds directly to the designated schools and the school decides how to distribute the scholarship funds among eligible students. In Arizona, one SGO tracks the amount of donations donors recommend for each of its partner schools and awards those funds to eligible students enrolled at those schools.

[36]A partner school is a term that some SGOs we visited used to describe a school within a subset of schools that is approved by and works with certain SGO(s). The partnerships can be based on a shared educational or religious affiliation between the school and SGO. In Pennsylvania, schools may be approved to operate as an SGO.

Further, Arizona's two TCS programs designed for individual donors (rather than businesses), allow donors to recommend that the funds they donate go to specific students.[37] An official at one SGO we visited in Arizona said they provided its external scholarship award committee with information about students' applications, including any student-specific recommendations, to inform the selection process. Pennsylvania programs do not expressly prohibit donor recommendations for specific students. In Pennsylvania, officials from one school that was also a SGO told us that they did not accept student-specific recommendations, while officials in a different SGO described how donors may not make student-specific recommendations, but may designate certain groups of students, such as children of first responders.

In addition to establishing program policies regarding how eligible students are selected, the three states also have requirements regarding the amount of scholarship money that can be awarded per student, and SGO officials described different methods for determining the amount and frequency of scholarship awards for each student.[38] Among the schools we visited the proportion of students who received TCS scholarships compared to students who did not receive TCS scholarships varied. For example, in one school in Florida, less than one percent of students received TCS scholarships and in a school in Arizona, school officials told us that about 80 percent of students receive TCS program scholarships.[39] When awarding scholarships, officials at some SGOs we visited chose to issue a limited number of awards at the maximum allowable scholarship amount while others chose to issue scholarships to more students in smaller amounts—sometimes for shorter periods. In addition, students in Arizona and Pennsylvania may receive multiple concurrent scholarships from different SGOs, different TCS programs in the state, or both. This

[37]Arizona's Original Individual Income Tax Credit Program and Switcher Individual Income Tax Credit Program both allow donors to recommend schools and specific students unless the student is the donor's dependent. Arizona's Low-Income Corporate Income Tax Program and Disabled/Displaced Corporate Income Tax Credit Program, allow donors to recommend schools, but not specific students.

[38]For more information about student eligibility criteria and maximum scholarship amounts in each of the three states' largest programs, see Appendix II.

[39]In some schools we visited, officials said that some of the students who did not receive TCS program scholarships received funds from other private school choice programs, such as education savings account or voucher programs. Others funded their education through family funds, school financial aid not related to private school choice programs, or other sources.

approach potentially increases the amount of funding students receive; however, it can also present logistical difficulties for the schools and families of scholarship recipients, according to SGO and school officials. For instance, officials at one school described wanting students to receive as much TCS funding as possible, but said it was also challenging to track the different SGO award cycles, incoming funds, and the projected impact on tuition balances for each student.

As part of the scholarship award process, some SGOs we visited told us they collected information about tuition and fees at schools to ensure scholarship award amounts do not exceed school tuition, per program requirements. Costs for tuition ranged from approximately $6,000 per year to approximately $37,000 per year among the schools we visited.

All Three States Require SGOs to Attest That They Will Follow Program Requirements, Submit Information on Their Operations, and Complete an Annual Financial Audit or Review

To participate in TCS programs, all three states require SGOs to provide a description of some of their operating procedures and regularly report donation and scholarship information. The type of information states collect and how they determine whether SGOs are following applicable TCS program requirements varies. (See table 2.)

Table 2: Types and Frequency of Activities Selected States Use to Determine if Scholarship Granting Organizations (SGO) Meet Requirements for Tax Credit Scholarship (TCS) Programs

State Agency Activities	Arizona	Florida	Pennsylvania
Collect information about SGO procedures	Annually	Annually	Initial application (or when SGO procedures change)
Collect signed attestations that SGOs will follow program requirements	Initial application (or when SGO leadership changes)	Annually	Annually
Provide general guidance	Guidance manual for SGOs	Ongoing communication with SGOs	Guidance manual for SGOs
Collect reports on donations or scholarships	Annually	Quarterly	Annually
Collect results from financial audits and reviews	Annually	Annually	Annually
Conduct operational audit, led by relevant state auditing agency	n/a	Annually	n/a

Source: TCS program documentation and interviews with state officials. | GAO-19-664

Note: "——" indicates that the state agency does not conduct the activity for its TCS programs. GAO identified each state's oversight activities by reviewing program documents, interviewing program officials, and sending documents to state officials for verification. GAO did not conduct an independent review of state laws and regulations. Each of these three states operates multiple TCS programs; the activities described in this table are used for all of the TCS programs operated by each state.

All three states require SGOs to complete an application to participate in TCS programs, which involves signing a form attesting that the SGO will follow program requirements and providing other types of documentation. This documentation includes evidence that the SGO is recognized as tax-exempt by the IRS, descriptions of the SGO's procedures for awarding scholarships, and other information, depending on the program. When reviewing SGO applications, state officials in all three states described how they check that all required information is included in accordance with program rules, but generally do not evaluate the content. For example, in Pennsylvania, a program official noted that the state agency checks that SGOs submit all required documents and relies on attestation statements signed by SGO officials as an essential step for certifying that SGOs will follow program requirements. In addition, state agencies also generally provide SGOs with some guidance on how to interpret program requirements in all three states. State agencies in both Arizona and Pennsylvania have developed guidance manuals for SGOs. Florida collaborates closely with SGOs to interpret program rules and develop guidance, according to SGO and state officials.

In addition to application materials, all three states require SGOs to regularly submit information about donations received, scholarships awarded, and the results of financial audits or reviews. The extent to

which these audits or reviews include an assessment of SGO compliance with program requirements varies. For example, in addition to financial audits, Florida also requires the state Auditor General to review SGO operations for compliance annually. According to SGO officials, the Florida Auditor General conducts file reviews and on-site visits during these compliance reviews. In Arizona, the SGO manual includes optional procedures financial auditors may use to determine if SGOs are following certain program requirements as part of their review. Pennsylvania does not require an assessment of SGOs' compliance with program requirements as part of its annual financial audit.

According to officials, states typically work with SGOs to resolve any compliance issues and state agencies rarely permanently revoke SGOs' approval to participate in TCS programs. According to officials in Florida, no SGOs have been removed from the programs due to noncompliance. The officials said that once a SGO has been approved through the states' initial application process it is very likely that they will be renewed each year unless a large compliance issue arises. Officials in Pennsylvania noted that they contact SGOs to clarify discrepancies in documentation and have temporarily revoked approval from a small proportion of SGOs that failed to submit required information. Officials in Arizona described one instance where a SGO was decertified due to noncompliance; officials stated that the SGO would be recertified if it resolved the compliance issues and reapplied to be a SGO.[40]

State and SGO Responsibilities for Monitoring Private Schools Varied in the Three States

State officials in the three states described different approaches to overseeing participating private schools' compliance with program requirements. Florida state officials described using a variety of monitoring activities to oversee participating private schools, while Arizona and Pennsylvania state agency officials said they do not conduct

[40]We found variation across the three states in what officials described as the ways individuals could report any instances of potential waste, fraud, or abuse in the programs. Officials in one state said that any potential issues could be reported to the state attorney general; officials in another state said they could be reported to the state agency administering the program, a SGO, or the state inspector general; and, officials in the third state said they could be reported to the state agency administering the program or the state auditor general.

ongoing monitoring activities due to the parameters of their statutory authority. (See table 3.)

Table 3: Practices Selected States and Scholarship Granting Organizations (SGOs) Use to Oversee Private Schools Participating in Tax Credit Scholarship (TCS) Programs

Category	Arizona	Florida	Pennsylvania
State practices	• No role in overseeing participating private schools' compliance with TCS program requirements, according to state officials.	• Review initial applications from private schools. • Conduct initial site visit to participating private school and additional site visit(s) to schools at risk of noncompliance. • Conduct annual assessment to verify participating private schools' compliance. • Ensure participating private schools report aggregate academic test results for an annual university study.	• For one of the two programs (Opportunity Scholarship Tax Credit Program), a state agency decides whether schools qualify to participate in the program. • For both programs, no ongoing monitoring of participating private schools, according to state officials.
SGO practices	• SGOs determine which schools qualify to participate in TCS programs.	• Review annual financial audit for participating private schools receiving $250,000 or more in TCS funds.	• For one program (Educational Improvement Tax Credit Scholarship Program), SGOs determine which schools qualify to participate in TCS programs.

Source: TCS program documentation and interviews with state and SGO officials. | GAO-19-664

Note: GAO identified these oversight practices by reviewing program documents, interviewing state and selected SGO officials, and sending documents to state and selected SGO officials for verification. GAO did not conduct an independent review of state laws and regulations. Each of these three states operates multiple TCS programs; unless otherwise noted, the practices described in this table are used for all of the TCS programs operated by each state.

Florida state officials described conducting site visits to schools during the initial application process and when they determine schools are at risk of noncompliance. They also noted their monitoring practices have led them to identify multiple issues of noncompliance at certain schools and, as a result, they have temporarily or permanently suspended those schools from receiving TCS program funds. They said the state also delegates certain monitoring activities to SGOs, such as reviewing financial audit results, following up with schools to resolve any issues resulting from those audits, and reporting those issues to the state. State and SGO officials said that SGOs in Florida may also be responsible for implementing any penalties to schools, such as adjusting scholarship payments to schools that do not meet certain reporting requirements.

For all Arizona programs and one of two Pennsylvania programs, officials told us that they generally rely on SGOs to verify that schools receiving scholarship funds meet program requirements. For example, in Arizona, SGOs are responsible for determining if a school qualifies to participate in the state's TCS programs. SGO officials we spoke to in Arizona noted

they require schools to sign documents attesting that the school meets the requirements to be a qualified school. In Pennsylvania's Educational Improvement Tax Credit Program, SGOs determine whether schools are qualified to participate and each SGO may approach this differently, according to state officials. For example, in addition to meeting the state's criteria for participation in the program, one SGO we spoke with in Pennsylvania also required schools to be tax-exempt, have a board and budget, and share its religious affiliation. Another SGO we spoke with in Pennsylvania required that a school attest that it meets program requirements. In Pennsylvania's other TCS program (the Opportunity Scholarship Tax Credit Program) state officials told us that they determine whether schools are qualified to participate and do not conduct subsequent monitoring activities.

Agency Comments

We provided a draft of this report to the Department of Education for review and comment. Education's comments are reproduced in appendix III. Education also provided technical comments, which we incorporated as appropriate. We also provided relevant excerpts from the report to the appropriate state agencies in each state we reviewed and incorporated their technical changes as appropriate.
Education did not comment on the report's findings. Instead, it provided information about the administration's tax credit proposal and made observations about how the scope of TCS programs covered in our report was both similar and different from educational programs that are addressed in the administration's proposal. In its comments, Education further stated that given these scope differences, the GAO report may not fully inform the debate around the administration's proposal. As stated in the draft report, promoting school choice options—both private and public—through a variety of spending and tax expenditure programs continues to be a topic of national debate. The purpose of this report was to examine state TCS programs that are used to fund scholarships that students can use to attend private elementary and secondary schools by describing: (1) key requirements state TCS programs have chosen to establish for SGOs, (2) key requirements for private schools participating in state TCS programs, and (3) how selected states implement TCS programs and how they assess whether SGOs and participating private schools are following key state requirements.

Education stated that the draft report does not note that several TCS programs allow scholarships to be used for educational expenses beyond

tuition. As stated in the draft report, some states use tax credit scholarship programs to fund preschool, career and technical education, or public school initiatives; the draft report further noted that these programs are outside the scope of this review. This report is the second of two GAO reports examining K-12 TCS programs. The prior report (GAO-18-679) discussed various ways students can use state K-12 TCS scholarships. Specifically, we reported that, as of SY 2017-2018, more than half of the programs (13 of 22) allowed students to use their scholarship money for costs like transportation and books in addition to tuition, whereas the remaining programs (9 of 22) required scholarship funds to be used for tuition only.

Education asserted positive fiscal effects associated with state TCS programs and cited several studies to this end. As stated in the draft report, tax credits are a form of forgone revenue. Assessing the fiscal impact of these programs was not among the purposes of this report. Thus, we did not assess the reliability of these studies or the validity of their results. Education also commented on our decision to exclude Montana's TCS program from the scope of this report. As noted in our report, we did not include Montana's program because it was the subject of pending litigation at the time of our review.

Finally, Education noted, as also stated in the draft report, that states and school districts have obligations under the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act to make equitable services available to eligible private school students, including those who participate in TCS programs. We agree and have reported extensively on equitable services in the context of private schools in GAO-16-712 and GAO-18-94.[41] In GAO-18-94, we recommended that Education review information provided by states related to changes in federal special education rights when a parent places a student with a disability in private school and work with the states to correct inaccurate or incorrect information. In that report, we identified some private school choice programs that were providing information that Education confirmed inaccurately described rights under the Individuals with Disabilities Education Act when a student with a disability is moved from a public to a private school. Education agreed with this recommendation – a recommendation GAO considers to be among the highest priority of

[41]See GAO, *School Choice: Private School Choice Programs are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students,* GAO-16-712 (Washington D.C.: August 11, 2016). *GAO, Private School Choice: Federal Actions Needed to Ensure Parents are Notified about Changes in Rights for Students with Disabilities,* GAO-18-94 (Washington D.C.: November 16, 2017).

recommendations we have made to the Department. However, Education has not yet fully implemented this recommendation and, as of September 2019, we found that some information Education confirmed to be inaccurate remains in several states' private school choice program documents.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (617) 788-0580 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in Appendix IV.

Jacqueline M. Nowicki
Director, Education, Workforce, and Income Security

Appendix I: State Tax Credit Scholarship Program Scholarship and Donation Information

Table 4: Tax Credit Scholarship (TCS) Program Scholarship Awards during School Year (SY) 2017-2018 and Donation Amounts during Calendar Year 2017

Program Name	Number of students receiving scholarships	Total amount of scholarships	Average scholarship award amount	Number of donors[e] (and type of donors: businesses, individuals, or both)	Total donations	Average donation amount per donor
Alabama Educational Scholarship Program	3,668	$21,544,454	$5,873	1,957[b] (both)	$29,699,374	$15,176[b]
Arizona Disabled/Displaced Corporate Income Tax Credit Program	1,162[a,c]	$5,205,607[c]	$4,480[c]	15[b] (business)	$5,000,000	$333,333[b]
Arizona Low-Income Corporate Income Tax Credit Program	24,712[a,c]	$59,690,982[c]	$2,415[c]	795[b] (business)	$73,859,838	$92,905[b]
Arizona Original Individual Income Tax Credit Program	34,632[a,c]	$64,293,115[c]	$1,856[c]	88,109[b] (individual)	$68,299,878	$775[b]
Arizona Switcher Individual Income Tax Credit Program	24,669[a,c]	$35,780,397[c]	$1,450[c]	47,895[b] (individual)	$40,341,802	$842[b]
Florida Hope Scholarship Program	n/a	n/a	n/a	n/a (both)	n/a	n/a
Florida Tax Credit Scholarship Program	108,098	$641,024,651	$7,208	286[d] (business)	$622,887,731[d]	n/a
Georgia Tax Credit Program	13,247[a,c]	$45,759,870[c]	$3,454[c]	23,411[b] (both)	$53,420,091	$2,282[b]
Illinois Invest In Kids Scholarship Tax Credit Program	n/a	n/a	n/a	n/a (both)	n/a	n/a
Indiana School Scholarship Program	9,743[a]	$20,538,384	$2,108	6,768[b,d] (both)	$24,957,566[d]	$3,724[b,d]
Iowa School Tuition Organization Tax Credit	10,752	$17,686,369	$1,645	3,054 (both)	$18,461,865	$6,045

Program Name	Number of students receiving scholarships	Total amount of scholarships	Average scholarship award amount	Number of donors[e] (and type of donors: businesses, individuals, or both)	Total donations	Average donation amount per donor
Kansas Tax Credit for Low Income Students Scholarship Program	307	$1,195,462	$3,894	153 (both)	$4,159,881	n/a
Louisiana Tuition Donation Credit Program	1,896	$7,957,566	$4,197	79 (both)	$9,096,597	$115,147
Nevada Educational Choice Scholarship Program	2,231	$10,897,220	$4,889	69[d] (business)	$13,425,705[d]	$194,575[d]
New Hampshire Education Tax Credit Program	332	$753,091	$2,268	71 (business)	$854,326	$12,385
Oklahoma Equal Opportunity Education Scholarship Credit	n/a	n/a	n/a	n/a (both)	n/a	n/a
Pennsylvania Educational Improvement Tax Credit Program	37,725	$68,507,072	$1,816	1,671[d] (business)	$87,266,765[d]	$52,225[d]
Pennsylvania Opportunity Scholarship Tax Credit Program	14,419	$35,904,659	$2,490	662[d] (business)	$52,257,909[d]	$78,939[d]
Rhode Island Tax Credits for Contributions to Scholarship Organizations	394[c]	$1,421,268[c]	$3,607[c]	40 (business)	$1,719,221	$42,981
South Carolina Exceptional SC Scholarship Fund	2,322	$10,774,220	$4,252	788[d] (both)	$11,000,000[d]	$13,959[d]
South Dakota Partners in Education Tax Credit Program	n/a	n/a	n/a	n/a (business)	n/a	n/a
Virginia Education Improvement Scholarships Tax Credits Program	4,462[a]	$6,875,620	$1,540	1,428[d] (both)	$18,564,000[d]	$12,812[d]

Source: GAO analysis of information provided by state agency officials. | GAO-19-664

Note: This table presents information for the programs that were operating as of January 2019. It does not include Montana's program— which was under judicial review at the time—and does not include TCS programs that were authorized after January 2019. "——" indicates that the program does not have information available or did not provide the information to GAO. The Florida Hope Scholarship Program and the Illinois Invest in Kids Tax Credit Scholarship Program were operating as of January 2019, but were not issuing scholarships in SY 2017-2018 or accepting donations during calendar year 2017. For more information about program rules for donations and scholarship awards, see GAO, *Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs*. GAO-18-679 (Washington D.C.: September 18, 2018).

[a]For this program, the state provided number of scholarships rather than number of students receiving scholarships. It is possible that students receive more than one scholarship per year. Information about scholarships in Virginia is an estimate, according to state officials.

[b]For this program, the state provided the number of donations rather than number of donors. It is possible that the same donor may make more than one donation per year.

[c]In most programs, the information about scholarships presented in this figure is for the 2017-2018 school year. The four Arizona programs provided information by state fiscal year (July 1, 2017-June 30, 2018), the Georgia program provided information by the 2017 calendar year, and the Rhode Island program provided information by the 2018 calendar year.

[d]In the majority of programs, the information about donations presented in this figure is for calendar year 2017. Florida, Pennsylvania and South Carolina provided information by state fiscal year (July 1, 2017-June 30, 2018) and Indiana, Nevada, and Virginia reported information for school year 2017-2018. Florida officials also stated that the provided information on donations is approximate.

[e]TCS programs that are mainly designed for businesses may sometimes result in individuals taking tax credits on their personal income taxes. For example, in some TCS programs for businesses, donations made by S-corporations or partnerships may be claimed as tax credits on their shareholders' or partners' personal state income tax returns, and the Pennsylvania programs allow groups of individuals to establish "Special Purpose Entities" specifically designed to allow individual donors to qualify for the programs, according to officials.

Appendix II: Key Features of Largest Tax Credit Scholarship Programs in Arizona, Florida, and Pennsylvania

The profiles in this appendix describe key features of the largest tax credit scholarship programs in Arizona, Florida, and Pennsylvania, as measured in terms of the scholarships awarded in 2017. Information in these profiles was obtained from interviews with state agency and selected scholarship granting organization (SGO) officials and state program documents, and was verified by state officials. GAO did not independently review state laws or regulations. Unless otherwise specified, program requirements are as of school year 2018-2019.

Figure 11: Examples of how Scholarships May be Awarded in the Arizona Original Individual Income Tax Credit Program

Figure 12: Illustration of how Scholarship Are Awarded in the Florida Tax Credit Scholarship Program

Figure 13: Examples of How Scholarships May be Awarded in the Pennsylvania Educational Improvement Tax Credit Program

Appendix III: Comments from the Department of Education

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

August 22, 2019

Ms. Jacqueline Nowicki
Director, Education, Workforce
and Income Security Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Nowicki:

I am pleased to provide the U.S. Department of Education's (ED's) response to the Government Accountability Office's (GAO's) draft report GAO-19-664, *Private School Choice: Accountability in State Tax Credit Scholarship Programs*. This report highlights 18 states using tax credits to encourage voluntary donations to scholarship programs for vulnerable children. Each of those programs is informed by the specific state context and needs of students in that state, leading to a rich variety of program designs. As you know, to support states' efforts to enable all students to pursue the education that will best equip them for success, Secretary DeVos and the Trump Administration are championing the Education Freedom Scholarship proposal. The proposal would create a federal tax credit to encourage $5 billion in voluntary donations to state designed and controlled scholarship programs, expanding families' access to all types of education options.

We understand GAO conducted this report to examine: (1) key requirements state tax credit scholarship (TCS) programs have chosen to establish for scholarship granting organizations (SGOs); (2) key requirements state TCS programs have chosen to establish for participating private schools; and (3) how selected states implement TCS programs and how they assess whether SGOs and participating private schools are following key state requirements. In light of the historic opportunity provided by the Education Freedom Scholarships proposal, ED hopes the report will help inform states as they work through the formation and implementation of state programs. To that end, the policy differences outlined in the report's analysis of state TCS programs further affirms the design of the Education Freedom Scholarships proposal, which provides a federal tax incentive for donations to state-identified SGOs.

While the draft report offers no recommendations for ED, we offer the following comments and responses for consideration:

1. GAO stated, "…promoting school choice options—both private and public—through a variety of spending and tax expenditure programs continues to be a topic of national debate. Although no federal TCS program exists, bills to authorize federal tax credits for contributions to SGOs have been introduced in recent years. In addition, the President's fiscal year 2020 budget request included a proposal for federal tax credits for donations to state-authorized SGOs."

   In February 2019, Representative Bradley Byrne (R-AL) introduced the "Education Freedom Scholarships and Opportunity Act" (H.R. 1434) and Senator Ted Cruz (R-TX)

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introduced a similar bill (S. 634) under the same name.[1] As of today, the two bills had a collective 79 cosponsors. These legislative proposals were based on the Trump Administration's Education Freedom Scholarships policy proposal, which was described in the FY 2020 Budget as follows: "The Budget proposes to make available annually $5 billion worth of tax credits for individual and corporate donations to state-authorized nonprofit education scholarship granting organizations (SGOs). SGOs would use donated funds to provide families with scholarships… that can be used on a range of educational activities… States would determine family eligibility requirements and allowable uses of scholarship funds."[2]

GAO then stated, "Some states also use tax credit scholarship programs to fund preschool, career and technical education, or public school initiatives. Such programs are outside the scope of this review." This note is fundamental, as GAO's analysis focused solely on private-school tuition scholarships. However, the Education Freedom Scholarships proposal—around which much of the "national debate" centers—empowers states to expand families' access to a range of education options. If a state chooses to participate, it can craft state-based scholarship programs that best meet the needs of their students, including programs focused on:

- Advanced, remedial, and elective courses;
- Apprenticeships and industry certifications;
- Concurrent and dual enrollment;
- Private and home education;
- Special education services and therapies;
- Transportation to education providers outside of a family's zoned school;
- Tutoring, especially for students in low-performing schools; and
- Summer and afterschool education programs.

Since states are not required to include any specific education setting, and the report is limited to only one potential type of scholarship program states may design, the extent to which GAO's analysis can help inform the debate around the Education Freedom Scholarships proposal is limited.

2. GAO stated TCS programs are "programs that offer state tax credits for donations to fund scholarships for students to attend private elementary and secondary schools." GAO fails to note that among the 22 programs reviewed, several programs allow scholarships to be used for education expenses beyond private school tuition. Examples include:
   - In New Hampshire, "[a]n eligible student may receive a scholarship … [for] the cost of college or university, accredited tutor or tutoring facility, or distance education program. A home education student may also receive a scholarship to cover educational expenses." N.H. Rev. Stat. § 77-G:2.[3]
   - In Florida, eligible SGOs "[m]ust provide scholarships, from eligible contributions, to eligible students for the cost of: … [t]ransportation to a Florida public school in which a

[1] See H.R. 1434: https://www.congress.gov/116/bills/hr1434/BILLS-116hr1434ih.pdf.
See S. 634: https://www.congress.gov/116/bills/s634/BILLS-116s634is.pdf.
[2] See the President's Fiscal Year 2020 Budget of the U.S. Government: https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf
See also the U.S. Department of Education's Fiscal Year 2020 Budget Summary: https://www2.ed.gov/about/overview/budget/budget20/summary/20summary.pdf
[3] http://www.gencourt.state.nh.us/rsa/html/v/77-g/77-g-mrg.htm

Page 3

student is enrolled and that is different from the school to which the student was assigned or to a lab school." Fla. Stat. § 1002.395(6)(d)(2).[4]

- In Kansas, educational scholarships may include "the costs of transportation to a qualified school if provided by such qualified school." Kan. Stat. § 72-4352(c).[5]
- In South Carolina, scholarships include "textbook fees and school-related transportation." S.C. Code § 12-6-3790(A)(8).[6]

3. GAO stated "… the financial impact to states from TCS programs primarily occurs through forgone revenue resulting from the associated tax credits." TCS programs are funded by new, voluntary donations, not existing public education dollars. The Education Freedom Scholarship proposal, which provides a federal tax incentive for donations to state-identified SGOs, will protect and enhance both public and private education, as scholarships may be focused on expanding access to new, full-time education programs or supplementing students' public education experiences.

   Moreover, several reports show state TCS programs have a positive fiscal effect on taxpayers. For example:
   - Dearmon and Evans' 2018 fiscal impact analysis of the Oklahoma Equal Opportunity Education Scholarship program indicated a total fiscal return of $2.91 ($2.91 saved for every $1.00 in tax credits issued) and a state only fiscal return of $1.39.[7]
   - An analysis of the Florida Corporate Income Tax Credit Scholarship program found that in FY 2007-08, "the state saved $1.49 in education funding for every dollar loss in corporate income tax revenue due to scholarship contributions."[8]
   - Similar such effects are found in Girardi and Gullickson's 2017 fiscal impact analysis of Iowa's School Tuition Organization Tax Credit program, and Lueken's 2018 research reviewed the fiscal effects of multiple programs.[9]

4. In January 2019, there were programs in 18 states. However, GAO cited programs in 17 states and explained in footnote 3 it did not include Montana's program in its analysis because, "In December 2018, the Supreme Court of Montana held that Montana's TCS program was unconstitutional under the state constitution. An appeal of this decision is currently pending before the U.S. Supreme Court." The appeal of the Supreme Court of Montana's ruling will be decided by the U.S. Supreme Court by end of summer 2020. The U.S. Supreme Court has already upheld the constitutionality of a privately funded TCS program in *Arizona Christian School Tuition Organization v. Winn.*[10] Moreover, the Supreme Court of New Hampshire refused to find its state TCS program unconstitutional in *Duncan v. State of New Hampshire*.[11] The U.S.

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[4] http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=1002.395&URL=1000-1099/1002/Sections/1002.395.html
[5] https://www.ksde.org/Portals/0/School%20Finance/Action%20Items/2018%20K_S_A_%2072-4351%20thru%2072-4357.pdf
[6] https://scstatehouse.gov/code/t12c006.php
[7] https://www.okcu.edu/uploads/business/docs/Scholarship-Tuition-Tax-Credit-FY-2017-Fiscal-Impact-Report.pdf
[8] http://www.oppaga.state.fl.us/reports/pdf/0868rpt.pdf
[9] https://tax.iowa.gov/sites/files/idr/2017%20STO%20Tax%20Credit%20Evaluation%20Study%20%281%29.pdf
https://www.tandfonline.com/doi/full/10.1080/15582159.2018.1447725
[10] https://www.supremecourt.gov/opinions/10pdf/09-987.pdf
[11] https://www.courts.state.nh.us/supreme/opinions/2014/2014074duncan.pdf

Supreme Court has also upheld the constitutionality of a publicly funded voucher program in Ohio in *Zelman v. Simmons-Harris*.[12]

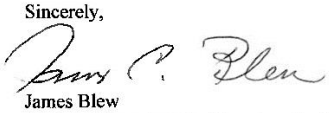
5. In its September 5, 2018, response to GAO-18-679, *Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs,* ED stated the IRS's final rule could meaningfully impact the draft report. ED appreciates GAO citing the final rule, Contributions in Exchange for State or Local Tax Credits, 84 Fed. Reg. 27513 (June 13, 2019), in a footnote. Readers should also see additional guidance providing a safe harbor under Section 164 for certain individuals[13] and additional guidance providing safe harbors under Section 162 for C corporations or specified passthrough entities.[14]

6. Although ancillary to the purpose of this report, it's important to better articulate requirements in the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA) to provide equitable services under these programs to eligible private school students and, as applicable, their teachers and their families. Since the passage of the ESEA in 1965, private school students and teachers have been eligible to participate in federal education programs sponsored under the Act, such as Title I, which provides services to low-achieving students residing in Title I public school attendance areas. Similarly, under the Individuals with Disabilities Education Act, state and local educational agencies must ensure the equitable participation of parentally placed private school children with disabilities in programs assisted by or carried out under the equitable participation requirements that apply to them.

In addition to these responses, ED has outlined additional technical comments in the appendix.

You may direct your questions to me at (202) 401-4614 or at James.Blew@ed.gov. We appreciate the work that went into this draft report and the opportunity to comment.

Sincerely,



James Blew
Assistant Secretary for Planning, Evaluation, and Policy Development

[12] https://supreme.justia.com/cases/federal/us/536/639/
[13] https://www.irs.gov/pub/irs-drop/n-19-12.pdf
[14] https://www.irs.gov/pub/irs-drop/rp-2019-12.pdf

Appendix IV: Staff Acknowledgments

GAO Contact:

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Staff Acknowledgments:

In addition to the individual named above, Nagla'a El-Hodiri (Assistant Director), Barbara Steel (Analyst-in-Charge), Andrew Emmons, and Jessica L. Yutzy made key contributions to this report. Also contributing to this report were Isabella Anderson, Jeff Arkin, Deborah Bland, Lilia Chaidez, Sarah Cornetto, Caitlin Cusati, Charles Ford, Monika Gomez, Alison Grantham, Kirsten Lauber, Sheila R. McCoy, Mimi Nguyen, Corinna Nicolaou, and Michelle Philpott.

Appendix V: Accessible Data

Data Tables

Accessible Data for Figure 1: States with Tax Credit Scholarship (TCS) Programs Operating as of January 2019, by Total Donations Received during Calendar Year 2017

Less than 10 (dollars in millions)	10- 30 (dollars in millions)	30-60 (dollars in millions)	60-100 (dollars in millions)	100-500 (dollars in millions)	More than 500 (dolars in millions)	Other
New Hampshire, Rhode Island, Kansas, Lousianna	Nevada, Indiana, Iowa, Alabama, South Carolina	Virginia, Georgia	(No states in this range)	Arizona (4 programs), Pennsylvania (2 programs)	Florida (2 programs)	No information available for Illinois, Oklahoma, and South Dakota

Sources: GAO analysis of data from state TCS programs; Map Resources (map). | GAO-19-664

Accessible Data for Figure 2: Key Requirements that Some States Have Chosen to Establish for Scholarship Granting Organizations (SGOs) Participating in Tax Credit Scholarship Programs

Financial Requirements	Administrative Requirements	Scholarship Award Requirements
Programs sometimes have requirements for SGOs related to: • Limit non-scholarship expenses to a given percentage of total SGO revenue or donations. • Policies for managing funds from donations, such as keeping separate accounts for scholarship and non-scholarship funds or using related interest on scholarships. • Annual financial audit or review. • Surety bonds to demonstrate fiscal soundness. • Conflict of interest policy or related policies designed to prevent personal financial gain among SGO personnel. • Restrictions on sharing resources with schools. • Report on number or amount of donations.	*Programs sometimes have requirements for SGOs related to:* • State approval or registration to operate as an SGO. • Qualifications of SGO officials, such as restrictions on previous bankruptcies. • Marketing and fundraising practices. • Report on number or amount of scholarships.	*Programs sometimes have requirements for SGOs related to:* • Working with multiple schools: prohibit SGOs from awarding scholarships to only one school. • Student recommendations: prohibit SGOs from allowing donors to recommend specific students. • School recommendations: prohibit SGOs from allowing donors to recommend schools.

Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

Accessible Data for Figure 3: Number of State Tax Credit Scholarship Programs with Key Financial Requirements for Scholarship Granting Organizations (SGOs), School Year 2018-2019

Financial requirements	Number of programs	
n/a	Not required	Required
Limit non-scholarship expenses to percentage of total donations	0	22
Policies for managing funds from donations[a]	10	12
Annual financial audit or review	3	19
Surety bonds to demonstrate fiscal soundness	19	3
Conflict of interest policy[b]	18	4
Restrictions on sharing resources with schools	14	8
Report on number or amount of donations	0	22

Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Accessible Data for Figure 4: Number of State Tax Credit Scholarship (TCS) Programs with Key Administrative Requirements for Scholarship Granting Organizations (SGOs), School Year 2018-2019

SGO administrative requirements	Number of programs	
n/a	Not required	Required
State approval or registration to operate as SGO[a]	0	22
Qualifications for SGO officials, such as restrictions on prior bankruptcies	12	10
Marketing and fundraising practices	13	9
Report on number or amount of scholarships	1	21

Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Accessible Data for Figure 5: Number of State Tax Credit Scholarship Programs with Key Awards Requirements for Scholarship Granting Organizations (SGOs), School Year 2018-2019

SGO scholarship award requirements	Number of programs	
n/a	No (do not prohibit)	Yes (prohibit)
Work with multiple schools: prohibit SGOs from awarding scholarships to only one school	2	20
Student recommendations: prohibit SGOs from allowing donors to recommend specific students	6	16

SGO scholarship award requirements	Number of programs	
n/a	No (do not prohibit)	Yes (prohibit)
School recommendations: prohibit SGOs from allowing donors to recommend specific schools	14	8

Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Accessible Data for Figure 6: Key Requirements that Some States with Tax Credit Scholarship (TCS) Programs Have Chosen to Establish for Participating Private Schools

Academic Requirements	Administrative Requirements	Financial Requirements
Programs sometimes have requirements for participating schools related to: • State approval or registration to participate in the program. • Accreditation completed by the state or an entity approved by the state. • Instructional time or student attendance. • Core subjects or curriculum. • Academic testing using the state test or another standardized test.	*Programs sometimes have requirements for participating schools related to:* • Background checks or fingerprinting for employees with direct, unsupervised contact with children. • Teacher qualifications. • Site visits by state agency staff or related entities.	*Programs sometimes have requirements for participating schools related to:* • Student withdrawal procedures (e.g. report withdrawals or repay scholarship). • Annual financial audit or review. • Proof of fiscal soundness, such as surety bonds or operating for a given number of years.

Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

Accessible Data for Figure 7: Number of State Tax Credit Scholarship Programs with Key Academic Requirements for Participating Private Schools, School Year 2018-2019

School academic requirements	Number of programs	
n/a	Not required	Required
State approval or registration to participate in program	13	9
Accreditation by the state or a state approved entity	8	14
Instructional time or student attendance	3	19
Core subjects or curriculum	4	18
Academic testing using the state test or another standardized test	11	11

Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Accessible Data for Figure 8: Number of State Tax Credit Scholarship Programs with Key Administrative Requirements for Participating Private Schools, School Year 2018-2019

School administrative requirements	Number of programs	
n/a	Not required	Not required
Background checks or fingerprinting for employees with direct contact with children	4	18
Teacher qualifications	10	12
Site visits by state agency or related staff	13	9

Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Accessible Data for Figure 9: Number of State Tax Credit Scholarship Programs with Key Financial Requirements for Participating Private Schools, School Year 2018-2019

School financial requirements	Number of programs	
n/a	Not required	Not required
Student withdrawal procedures (e.g. report withdrawals or repay scholarship)	3	19
Proof of fiscal soundness (e.g. surety bonds or years in operation)	17	5
Annual financial audit or review	18	4

Source: GAO analysis of program documents provided to state officials for verification. | GAO-19-664

Accessible Data for Figure 10: Summary of Key Steps and Entities Involved in the Tax Credit and Donation Process in Arizona, Florida, and Pennsylvania

Key steps
State laws and regulations establish program requirements, including any limits on program-wide donations.
Scholarship Granting Organizations (SGO) recruit potential donors and sometimes assist them in applying for tax credits from the state. In some cases for certain states, schools or families may also recruit potential donors.
State agencies pre-approve tax credits in programs with limits on program-wide donations.[a]
Donors donate to SGOs. This generally involves sending funds directly to SGOs[b] and claiming tax credits on state tax returns.

Key steps
State agencies review some or all donor tax returns that claim scholarship tax credits, depending on the state.[c]

Source: GAO summary of tax credit scholarship program documentation and interviews with program officials. | GAO-19-664

Accessible Data for Figure 11: Examples of how Scholarships May be Awarded in the Arizona Original Individual Income Tax Credit Program

Step 1	Step 2	Step 3
Donor donates to SGO, sometimes recommending specific students or schools	Example A Donor does not make any recommendations and SGO does not have partner schools.	SGO awards a scholarship to a student to use at any participating school of student's choice.
Donor donates to SGO, sometimes recommending specific students or schools	Example B Donor recommends a specific student and SGO has partner schools.	SGO awards scholarship to eligible student(s) at a partner school, considering donor's recommendation about which student(s) should receive the award.
Donor donates to SGO, sometimes recommending specific students or schools	Example C Donor recommends that donation fund students at a specific school.	SGO works with the school to identify students. SGO awards scholarship to an eligible student at the school recommended by the donor.

Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

Accessible Data for Figure 12: Illustration of how Scholarship Are Awarded in the Florida Tax Credit Scholarship Program

Step 1	Step 2
Donor donates to SGO	**SGO** awards a scholarship to a student to use at any participating school.

Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

Accessible Data for Figure 13: Examples of How Scholarships May be Awarded in the Pennsylvania Educational Improvement Tax Credit Program

Step 1	Step 2	Step 3
Donor donates to SGO, sometimes recommending specific schools	Example A Donor does not make any recommendations and SGO does not have partner schools.	SGO awards a scholarship to a student to use at any participating school.

Step 1	Step 2	Step 3
Donor donates to SGO, sometimes recommending specific schools	Example B Donor does not make any recommendations and SGO has partner schools.	SGO provides funds to a partner school and school awards scholarship to eligible student(s).
Donor donates to SGO, sometimes recommending specific schools	Example C Donor donates to school that is approved as an SGO.	SGO/school awards scholarships to eligible students as part of its general financial aid process rather than as a separate scholarship award process.

Source: GAO analysis of information from private school choice program documents and reports. | GAO-19-664

Agency Comment Letter

Accessible Text for Appendix III Comments from the Department of Education

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August 22, 2019

Ms. Jacqueline Nowicki Director, Education, Workforce and Income Security Issues

Government Accountability Office

441 G Street, NW

Washington, DC 20548

Dear Ms. Nowicki:

I am pleased to provide the U.S. Department of Education's (ED's) response to the Government Accountability Office's (GAO's) draft report GAO-19-664, Private School Choice: Accountability in State Tax Credit Scholarship Programs. This report highlights 18 states using tax credits to encourage voluntary donations to scholarship programs for vulnerable children. Each of those programs is informed by the specific state context and needs of students in that state, leading to a rich variety of program designs. As you know, to support states ' efforts to enable all students to pursue the education that will best equip them for success, Secretary

DeVos and the Trump Administration are championing the Education Freedom Scholarship proposal. The proposal would create a federal tax credit to encourage $5 billion in voluntary donations to state designed and controlled scholarship programs, expanding families' access to all types of education options.

We understand GAO conducted this report to examine: (1) key requirements state tax credit scholarship (TCS) programs have chosen to establish for scholarship granting organizations (SGOs); (2) key requirements state TCS programs have chosen to establish for participating private schools; and (3) how selected states implement TCS programs and how they assess whether SGOs and participating private schools are following key state requirements. In light of the historic opportunity provided by the Education Freedom Scholarships proposal, ED hopes the report will help inform states as they work through the formation and implementation of state programs. To that end, the policy differences outlined in the report's analysis of state TCS programs further affirms the design of the Education Freedom Scholarships proposal, which provides a federal tax incentive for donations to state-identified SGOs.

While the draft report offers no recommendations for ED, we offer the following comments and responses for consideration:

1. GAO stated, " ... promoting school choice options-both private and public- through a variety of spending and tax expenditure programs continues to be a topic of national debate. Although no federal TCS program exists, bills to authorize federal tax credits for contributions to SGOs have been introduced in recent years. In addition, the President's fiscal year 2020 budget request included a proposal for federal tax credits for donations to state-authorized SGOs."

In February 2019, Representative Bradley Byrne (R-AL) introduced the "Education Freedom Scholarships and Opportunity Act" (H.R. 1434) and Senator Ted Cruz (R-TX)

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introduced a similar bill (S. 634) under the same name.[1] As of today, the two bills had a collective 79 cosponsors. These legislative proposals were based on the Trump Administration's Education Freedom Scholarships policy proposal, which was described in the FY 2020 Budget as follows: "The Budget proposes to make available annually $5 billion worth of tax

credits for individual and corporate donations to state-authorized nonprofit education scholarship granting organizations (SGOs). SGOs would use donated funds to provide families with scholarships… that can be used on a range of educational activities... States would determine family eligibility requirements and allowable uses of scholarship funds."[2]

GAO then stated, "Some states also use tax credit scholarship programs to fund preschool, career and technical education, or public school initiatives. Such programs are outside the scope of this review." This note is fundamental, as GAO' s analysis focused solely on private- school tuition scholarships. However, the Education Freedom Scholarships proposal-around which much of the "national debate" centers-empowers states to expand families' access to a range of education options. If a state chooses to participate, it can craft state-based scholarship programs that best meet the needs of their students, including programs focused on:

- Advanced, remedial, and elective courses;
- Apprenticeships and industry certifications;
- Concurrent and dual enrollment;
- Private and home education;
- Special education services and therapies;
- Transportation to education providers outside of a family's zoned school;
- Tutoring, especially for students in low-performing schools; and
- Summer and afterschool education programs.

Since states are not required to include any specific education setting, and the report is limited to only one potential type of scholarship program states may design, the extent to which GAO's analysis can help inform the debate around the Education Freedom Scholarships proposal is limited.

2. GAO stated TCS programs are "programs that offer state tax credits for donations to fund scholarships for students to attend private elementary and secondary schools." GAO fails to note that among the

22 programs reviewed, several programs allow scholarships to be used for education expenses beyond private school tuition. Examples include:

- In New Hampshire, "[a]n eligible student may receive a scholarship ... [for] the cost of college or university, accredited tutor or tutoring facility, or distance education program. A home education student may also receive a scholarship to cover educational expenses." N.H. Rev. Stat. § 77-G:2.[3]

- In Florida, eligible SGOs "[m]ust provide scholarships, from eligible contributions, to eligible students for the cost of: ... [t]ransportation to a Florida public school in which a

[1] See H.R. 1434: https://www.congress.gov/ l l6/bills/hr1434/BILLS-116hr1434ih.pdf. See S. 634: https://www.congress.gov/116/bills/s634/BILLS-1l 6s634is.pdf.

[2] See the President's Fiscal Year 2020 Budget of the U.S. Government: https://www.whitehouse.gov/wp- content/uploads/2019/03/budget-fy2020p.df

See also the U.S. Department of Education's Fiscal Year 2020 Budget Summary: https://www2.ed.gov/about/overview/budget/budget20/summary/20summ ary.pdf

[3] http://www.gencourt.state.nh.us/rsa/html/v/77-g/77-g-mrg.htm

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student is enrolled and that is different from the school to which the student was assigned or to a lab school." Fla. Stat.§ 1002.395(6)(d)(2).[4]

- In Kansas, educational scholarships may include "the costs of transportation to a qualified school if provided by such qualified school." Kan. Stat.§ 72-4352(c).[5]

- In South Carolina, scholarships include "textbook fees and school-related transportation." S.C. Code§ 12-6-3790(A)(8).[6]

3. GAO stated "… the financial impact to states from TCS programs primarily occurs through forgone revenue resulting from the associated tax credits." TCS programs are funded by new, voluntary donations, not existing public education dollars. The Education Freedom Scholarship proposal, which provides a federal tax incentive for donations to state-identified SGOs, will protect and enhance both public and private education, as scholarships may be focused on expanding access to new, full-time education programs or supplementing students' public education experiences.

Moreover, several reports show state TCS programs have a positive fiscal effect on taxpayers. For example:

- Deannon and Evans' 2018 fiscal impact analysis of the Oklahoma Equal Opportunity Education Scholarship program indicated a total fiscal return of $2.91 ($2.91 saved for every $1.00 in tax credits issued) and a state only fiscal return of $1.39.[7]

- An analysis of the Florida Corporate Income Tax Credit Scholarship program found that in FY 2007-08, "the state saved $1.49 in education funding for every dollar loss in corporate income tax revenue due to scholarship contributions."[8]

- Similar such effects are found in Girardi and Gullickson's 2017 fiscal impact analysis of Iowa's School Tuition Organization Tax Credit program, and Lueken's 2018 research reviewed the fiscal effects of multiple programs.[9]

4. In January 2019, there were programs in 18 states. However, GAO cited programs in 17 states and explained in footnote 3 it did not include Montana's program in its analysis because, "In December 2018, the Supreme Court of Montana held that Montana's TCS program was unconstitutional under the state constitution. An appeal of this decision is currently pending before the U.S. Supreme Court." The appeal of the Supreme Court of Montana's ruling will be decided by the U.S. Supreme Court by end of summer 2020. The U.S. Supreme Court has already upheld the constitutionality of a privately funded TCS program in Arizona Christian School Tuition Organization v. Winn.[10] Moreover, the Supreme Court of New Hampshire refused to find its state TCS program unconstitutional in Duncan v. State of New Hampshire.[11] The U.S.

[4] http://www.leg.state .fl.us/statutes/index.cfm?mode=View%20S tatutes&SubMenu=l&App_mode=Display _Statute &Search_String=!002.395&URL=I 000-1099/1002/Sections/1002.395.html

[5] https://www.ksde.org/Portals/0/School%20Finance/Action%20Items/2018%20K_S_A_%2072-4351%20thru%2072-4357.pdf

[6] https://scstatehouse.gov/code/t12c006.php

[7] https://www.okcu.edu/uploads/business/docs/Scholarship-Tuition-Tax-Credit-FY-2017-Fiscal-Impact-Report.pdf

[8] http://www.oppaga.state.fl.us/reports/pdf/0868rpt.pdf

[9] https://tax.iowa.gov/sites/files/idr/2017%20STO%20Tax%20Credit%20Evaluation%20Study%20%281%29.pdf https://www.tandfonline.com/doi/full/10.1080/15582159.2018.1447725

[10] https://www.supremecourt.gov/opinions/I 0pdf/09-987.pdf

[11] https://www.courts.state.nh.us/supreme/opinions/2014/2014074duncan.pdf

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Supreme Court has also upheld the constitutionality of a publicly funded voucher program in Ohio in Zelman v. Simmons-Harris.[12]

5. In its September 5, 2018, response to GAO-18-679, Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs, ED stated the IRS's final rule could meaningfully impact the draft report. ED appreciates GAO citing the final rule, Contributions in Exchange for State or Local Tax Credits, 84 Fed. Reg. 27513 (June 13, 2019), in a footnote. Readers should also see additional guidance providing a safe harbor under Section 164 for certain individuals[13] and additional guidance providing safe harbors under Section 162 for C corporations or specified passthrough entities.[14]

6. Although ancillary to the purpose of this report, it's important to better articulate requirements in the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA) to provide equitable services under these programs to eligible private school students and, as applicable, their teachers and their families. Since the passage of the ESEA in 1965, private school students and teachers have been eligible to participate in federal education programs sponsored under the Act, such as Title I, which provides services to low- achieving students residing in Title I public school attendance areas. Similarly, under the Individuals with Disabilities Education Act, state and local educational agencies must ensure the equitable participation of parentally placed private school children with disabilities in programs assisted by or carried out under the equitable participation requirements that apply to them.

In addition to these responses, ED has outlined additional technical comments in the appendix.

You may direct your questions to me at (202) 401-4614 or at James.Blew@ed.gov. We appreciate the work that went into this draft report and the opportunity to comment.

Sincerely,

James Blew

Assistant Secretary for Planning, Evaluation, and Policy Development

[12] https://supreme.justia.com/cases/federal/us/536/639/

[13] https://www.irs.gov/pub/irs-drop/n-19-12.pdf

[14] https://www.irs.gov/pub/irs-drop/rp-2019-12.pdf

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