

**Virginia Department of Education**  
***Guidelines for the Education Improvement Scholarships Tax Credits Program***  
**Effective October 16, 2018**

**Background**

Legislation (Chapters 731 and 842) enacted by the 2012 General Assembly authorized the *Education Improvement Scholarships Tax Credits Program* and required the Virginia Department of Education (the “Department”) to develop guidelines implementing the provisions of Sections 58.1-439.25 through 58.1-439.28 (i.e., Article 13.3 of Title 58.1) of the *Code of Virginia*. The program provides state tax credits for persons or businesses making monetary or marketable securities donations to approved scholarship foundations that provide scholarships to eligible students for qualified educational expenses incurred in attending eligible nonpublic schools. Under the legislation, the guidelines are exempt from the provisions of the Virginia Administrative Process Act.

These guidelines are issued by the Department to provide guidance to individuals and businesses regarding the *Education Improvement Scholarships Tax Credits Program*. These guidelines supersede the Guidelines for the Education Improvement Scholarships Tax Credits Program adopted by the Department on October 20, 2017. These guidelines will be published and posted on the Department’s website at:

[http://www.doe.virginia.gov/school\\_finance/scholarships\\_tax\\_credits/index.shtml](http://www.doe.virginia.gov/school_finance/scholarships_tax_credits/index.shtml).

**Definitions**

*"Department" means the Virginia Department of Education.*

*"Donor" means a person or business entity eligible to make tax credit-approved donations to an eligible scholarship foundation.*

*"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines (as defined in this subsection below); and (iii) who otherwise is a student as defined in this section.*

*"Enrolled" means a student included on the roll of a Virginia public school.*

*"Marketable securities" means an equity or debt instrument that is readily salable and can be converted into cash, or exchanged with ease.*

*"Monetary or marketable securities donation" means a donation to an eligible scholarship foundation by a donor in the form of cash, check, credit card, or other monetary gift or marketable securities, but not goods, services, or property.*

*"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the*

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*District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.*

*"Program year" means the annual period from July 1 to June 30 during which the maximum amount of tax credits may be granted; the same calendar period as the state fiscal year.*

*"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.*

*"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department in accordance with the provisions of Section 58.1-439.27 of the Code of Virginia; and (iii) established to provide financial aid for the education of students residing in the Commonwealth.*

*"School year" means the period of time between the opening day of school in the fall and the closing day of school for that school term. Generally, a school year consists of 180 teaching days or 990 teaching hours. This definition is based on the Department's Glossary of Education Terms at <http://www.doe.virginia.gov/glossaries/glossary.pdf>.*

*"Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year. A resident of Virginia means that the student meets the requirements of Section 22.1-3 of the Code of Virginia, for admission to a Virginia public school.*

### **Scholarship foundation eligibility**

A scholarship foundation may be a nonstock, nonprofit corporation established in Virginia or in another state.

A nonstock, nonprofit entity may qualify as a scholarship foundation if:

1. The nonstock, nonprofit entity is a corporation;
2. The entity complies with Section 57-48 et seq. of the *Code of Virginia*;
3. Applicable provisions of Article 13.3 of Title 58.1 (i.e., Sections 58.1-439.25 through 58.1-439.28) of the *Code of Virginia* are met; and,
4. The nonprofit entity's articles of incorporation or equivalent documents, or its governing rules, such as its bylaws, specifically state that one of its purposes is to provide financial

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aid for the education of students residing in the Commonwealth. An existing nonprofit, nonstock corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and that meets applicable provisions of Article 13.3 of Title 58.1 of the *Code of Virginia*, will be considered to have met this requirement if it was previously established for any other charitable purpose, but its articles of incorporation or equivalent documents, or its governing rules, such as its bylaws, have been legally and validly amended to also specifically state that another of its purposes is to provide financial aid for the education of students residing in the Commonwealth.

Any entity that has qualified as a scholarship foundation under the provisions of Article 13.3 of Section 58.1 of the *Code of Virginia*, and these guidelines, and which later learns that the Internal Revenue Service (IRS) has decided to revoke its tax-exempt status will immediately cease to be qualified to receive and administer tax credit-derived scholarship funds. Such entity must immediately notify the Department of this change in status and the Department will remove such entity from the approved list of eligible scholarship foundations. Scholarship foundations subject to removal from the list due to failure to meet this requirement will be notified by the Department of such action by U.S. Mail.

A nonprofit entity that qualifies as a scholarship foundation under Article 13.3 of Title 58.1 of the *Code of Virginia*, and these guidelines, may perform other charitable purposes. For example, a neighborhood organization that receives an allocation of tax credits under the Neighborhood Assistance Act Tax Credit Program for Education may also be eligible to receive and administer tax credit-derived donations under Article 13.3 if it meets eligibility requirements contained in Article 13.3 and these guidelines.

No single donation may be used to qualify for state tax credits under more than one state tax credit program unless otherwise authorized by the *Code of Virginia*.

### **Scholarship foundation application process**

The program year for the implementation of issued tax credits is July 1 through June 30. An applicant may submit an application and the required documentation, via U.S. Mail, at any time during the year to become a qualified scholarship foundation and to be approved to receive and administer tax credit-approved donations. The Department will notify the applicant by U.S. Mail within 30 calendar days of receipt of the application that such application is either complete or incomplete, and what additional information, if any, is required. Within 60 calendar days after receipt of its complete application, the Department will notify an applicant by U.S. Mail that its application has either been approved or denied. Applications will be reviewed in the order received by the Department.

The following information must be submitted to the Department by applicants seeking to qualify as a scholarship foundation, as defined in Section 58.1-439.25 of the *Code of Virginia*, to receive and administer tax credit-derived scholarship funds:

1. A general application form in a format determined by the Department and made available on the Department website.

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2. A copy of the original Determination Letter or Group Ruling issued by the Internal Revenue Service (IRS) granting the applicant scholarship foundation federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
3. A copy of the articles of incorporation or equivalent documents, or the governing rules, such as the bylaws, of the applicant scholarship foundation.
4. A copy of the organization's current letter from the Virginia Department of Agriculture and Consumer Affairs (VDACS) certifying that the organization complies with Section 57-48 et seq. of the *Code of Virginia*.
5. An assurance statement signed by an officer of the applicant scholarship foundation assuring that, in issuing scholarships from tax credit-derived funds, that the applicant foundation will (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or to eligible students with a disability; (ii) not limit scholarships to students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. For purposes of these guidelines, "household income" is based on the U.S. Census Bureau's definition of income, which is used for computing poverty statistics, and the U.S. Census Bureau's definition of household.
6. A copy of an audit or review for the foundation's most recent year ended performed by an independent certified public accountant, or, if the scholarship foundation's total revenues (including the value of all donations) were \$100,000 or less for the most recent year ended, a compilation for such year performed by an independent certified public accountant. In the event that a foundation has not been in existence for two years or more, and a compilation, audit or review has not been conducted, the foundation must provide a written statement to the Department that explains why such compilation, audit or review is not available, and when the foundation expects to have a compilation, audit or review conducted.

The applicant foundation's audit, review or compilation must not contain significant financial or operating risk, or areas of concern, that could prevent the applicant from providing education expenses scholarships to eligible students in Virginia.

### **Notice of approval or denial process**

The Department will notify an applicant by U.S. Mail within 30 calendar days that its application is complete and of the beginning date of the 60-day approval period during which the Department must notify the applicant that the Department has either approved or denied its application. The Department will notify an applicant in writing via U.S. Mail of approval or denial of its application, including reasons for denial, within 60 calendar days after receipt of its complete application.

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### **List of qualified scholarship foundations**

The Department will publish on its website a list of each scholarship foundation qualified under the program. The list will be updated on a continual basis as additional scholarship foundations are approved. Once a foundation has been qualified by the Department, it remains qualified until the foundation requests to be removed from the list or the scholarship foundation is removed from the list by the Department.

When a scholarship foundation submits documentation supporting a donation's tax credit eligibility, the scholarship foundation is affirming its compliance with the policies and procedures outlined in these guidelines. If during the program year an approved scholarship foundation's VDACS registration expires, the scholarship foundation must abstain from submitting tax credit-eligible donations until proof of the renewed VDACS registration is received by the Department. The Department is required to remove a foundation from the annual list if it no longer meets the requirements outlined in the applicable provisions of Article 13.3 of Title 58.1 of the *Code of Virginia*, and these guidelines.

At its discretion, the Department may periodically require a qualified foundation to submit updated or additional information for the purpose of determining whether or not a foundation continues to meet the requirements outlined in the applicable *Code of Virginia* provisions and these guidelines. The Department may exercise this discretion in cases including, but not limited to, where new factual information calls into question the continued qualification of a scholarship foundation based on the requirements of Article 13.3 of Title 58.1 of the *Code of Virginia*, and these guidelines.

The Department may remove a scholarship foundation from its annual list based on a finding of program abuse including, but not limited to, activities non-compliant with applicable *Code of Virginia* provisions and these guidelines, fraudulent valuation or reporting of contributions, material deviations from the approved application, failure to maintain a current registration with VDACS or other actions that are inconsistent with the purpose of the program.

### **Annual list of scholarship foundations provided to General Assembly**

The Department is required to submit a list of all scholarship foundations receiving donations for which tax credits were issued to the Chairmen of the House and Senate Finance Committees by December 1 each year. The list will be based on donations received during the 12-month period ending on the immediately preceding June 30.

### **Tax credits for donations; minimum donation; maximum tax credits**

The program year for the implementation of issued tax credits is July 1 through June 30.

Tax credit percentage, minimum donations, and maximum tax credits per year are as provided in Section 58.1-439.26 of the *Code of Virginia*. Only monetary or marketable securities donations are eligible for tax credits under the program.

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For the taxable year beginning on or after January 1, 2013 (but before the taxable year beginning on January 1, 2028), donors are eligible to earn a credit against any tax due under Article 2 (Section 58.1-320 et seq.) or Article 10 (Section 58.1-400 et seq.), Chapter 12 (Section 58.1-1200 et seq.), Chapter 25 (Section 58.1-2500 et seq.), or Article 2 (Section 58.1-2620 et seq.) of Chapter 26, of the *Code of Virginia*, in an amount equal to 65 percent of the value of the monetary or marketable securities donation made by the donor to a scholarship foundation included on the approved list of foundations published by the Department. The credit is allowed to be claimed for the taxable year in which the donation is made. Any credit not used may be carried over for the next five succeeding taxable years or until the total amount of the credit has been taken, whichever is sooner.

For individuals, the minimum value of any monetary or marketable securities donation eligible for a tax credit is \$500 in a taxable year, and the maximum value of monetary or marketable securities donations eligible for tax credits is the first \$125,000 in value of donations made in a taxable year. Such limitations on the minimum and maximum values of donations eligible for tax credits in a taxable year do not apply to donations made by any business entity, including a sole proprietorship.

After an individual donor meets or exceeds the required \$500 minimum donation amount to a scholarship foundation, the individual donor can receive additional tax credits for donations to the same scholarship foundation that are each less than \$500, provided that the donations are all made within the same taxable year and do not exceed the aggregate maximum value specified above. For purposes of these guidelines, a donation consists of all contributions made to a qualified scholarship foundation in a taxable year by a donor who has been preauthorized for tax credits by the Department, as provided in the next section of these guidelines.

Tax credits are issued by the Department to donors making monetary or marketable securities donations to eligible scholarship foundations under the following conditions:

1. Only monetary or marketable securities donations made to scholarship foundations on the approved list published by the Department on the date the donation was made are eligible for tax credits;
2. The total amount of tax credits that may be granted each program year (i.e., state fiscal year) may not exceed \$25 million;
3. The amount of the credit may not exceed the person's tax liability pursuant to Article 2 (Section 58.1-320 et seq.) or Article 10 (Section 58.1-400 et seq.), Chapter 12 (Section 58.1-1200 et seq.), Chapter 25 (Section 58.1-2500 et seq.), or Article 2 (Section 58.1-2620 et seq.) of Chapter 26, of the *Code of Virginia*, as applicable, for the taxable year in which the credit is claimed. Any credit not usable for the taxable year in which the monetary or marketable securities donation is made may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (Section 58.1-320 et seq.) or Article 10 (Section 58.1-400 et seq.), Chapter 12 (Section 58.1-1200 et seq.), Chapter 25 (Section 58.1-2500 et seq.), or Article 2 (Section 58.1-2620 et seq.) of Chapter 26, of the *Code of Virginia*, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner. If a donor is unable to use

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all of the credits in the five taxable years following the year that the donation was made, the donor is not permitted to transfer the unused credits to another person; and

4. Every person seeking the credit allowed under these guidelines must submit with the applicable tax return the tax credit certification document issued by the Department.

### **Preauthorization of tax credits**

On a form made available on the Department website, a donor seeking to make a monetary or marketable securities donation to one or more eligible scholarship foundations, or one or more scholarship foundations on behalf of such donor, must request preauthorization for a specified tax credit amount from the Department.

The Department will preauthorize tax credits up to \$25 million for each program year (i.e., state fiscal year) on a first-come, first-served basis. First-come, first-served is determined based on a date and time stamp of the preauthorization request. For preauthorization forms submitted by scholarship foundations on behalf of donors via a secure Web-based system on the Department website, the date and time received will be documented electronically. For preauthorization forms submitted by individual donors via U.S. Mail, all requests received on the same day will be opened in random order and date and time stamped upon opening. When the \$25 million program year limit is reached, donors will be notified that they have been placed on a waiting list.

A donor that is approved for a preauthorized amount of tax credits will receive from the Department, via U.S. Mail, a preauthorization notice. The preauthorization notice must accompany the preauthorized donation from the donor to the scholarship foundation.

Preauthorization notices not acted upon by the donor within 180 calendar days of issuance are void. If a donor makes one or more partial payments on a preauthorization notice, the remaining amount becomes void 180 calendar days after issuance. The voided amount is then available for approval of other preauthorization requests in the order in which they were received.

At the beginning of each new program year, any preauthorized tax credits from the previous program year that have not been acted upon but are still valid will be carried over to the new program year and deducted from the \$25 million program year tax credit limitation. If the preauthorized tax credits are not acted upon by the donor by making a donation and providing the required signed preauthorization notice to the scholarship foundation before the expiration of the 180 calendar days, the unused preauthorized tax credits will be added back to the total amount of tax credits that may be allocated in a program year.

At least monthly, the Department will update the following information on its website: the amount of outstanding approved tax credit preauthorizations from the prior program year, the amount of tax credits that have been preauthorized in the current program year and the remaining available tax credits for the current program year.

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### **Certification by scholarship foundation; required supporting documentation for donations; value and date of donation**

The preauthorization notice issued to the donor by the Department must accompany the monetary or marketable securities donation from the donor to the scholarship foundation. The scholarship foundation must, within 40 calendar days from the date of the donation, submit to the Department, via a secure Web-based system contained on the Department website, a completed preauthorization notice certifying the donor, the value and type of the donation, and the date it was received from the donor, along with documentation that supports the date, amount, and type of donation.

The date and value of a donation used to calculate the preauthorized tax credit amount is the same as the date and value of a donation used for federal income tax purposes, based on the laws and regulations of the United States related to federal income taxes. The date of donation for a check is either the date the donation was hand delivered or the date it was mailed. However, if a post-dated check is hand delivered or mailed, the date of donation shall be considered the date of the check, not the date of delivery. For credit card transactions and payroll deductions, the date of donation is the date the charge or deduction is made. For marketable securities, the date of donation is the transfer date.

For monetary donations, supporting documentation provided by the scholarship foundation to the Department must include a copy of the check(s), charge card transaction(s), or payroll deduction record(s). For electronic funds transfers, a statement or donor acknowledgement letter must accompany the bank check or receipt in order to verify the name of the donor.

Provided that the scholarship foundation can provide supporting documentation (receipt, financial statement, etc.) with the following information: donor's name, the amount of the donation, the date of the donation, and the name of the scholarship foundation receiving the donation, an online donation made to an approved scholarship foundation using a third-party payment processor or social media is permitted. A donation made from a Deferred Charitable Contribution Plan does not constitute a donation made directly to an approved scholarship foundation and, therefore, is not eligible for a tax credit.

Supporting documentation for donations of marketable securities must include either a letter from the brokerage firm or a copy of a transaction report from the donor's stock portfolio that shows: the name of the foundation that received the donation, the number of units, and the value. The value is the high and low or mean price per share on the transfer date for stocks, or the net asset value per unit at the close of the transfer date for mutual funds. For marketable securities owned by two or more owners, the brokerage firm must detail in its letter how the value of the donation was determined for each donor. Donors may not specify that part of a donation of marketable securities is a donation under the *Neighborhood Assistance Tax Credit Program for Education*. If a donor donates separate stocks or funds to organizations under both tax credit programs and uses the same supporting documentation, the brokerage firm letter must detail how the separate stocks or funds were donated under each program.

For donations of marketable securities, the scholarship foundation must sell such securities and convert them into cash no more than 21 calendar days after receipt of the donation. The

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scholarship foundation must submit additional supporting documentation to the Department that demonstrates it has satisfied this requirement within 40 calendar days from the date of the donation.

A scholarship foundation may report the cumulative donations using the same preauthorization notice form issued to the donor by the Department, along with the proper supporting documentation. If a donor makes multiple donations within the 180 day period that are reported on the same preauthorization notice, the donation date is the date of the last donation during that time period. For individuals making multiple donations within the 180 day period that are each less than the required minimum donation amount but that in aggregate equal or exceed the minimum donation amount, the scholarship foundation must report the cumulative donations using the same preauthorization notice and attach all supporting documentation for each donation.

### **Issuance of tax credits**

Upon receipt and approval by the Department of the preauthorization notice with required supporting documentation and certification of the value and type of donation by the scholarship foundation, the Department will issue a tax credit certificate as soon as practicable, and in no case longer than 30 calendar days to the donor eligible for the tax credit. The tax credit certificate will issued to the donor in a window envelope with the Commonwealth of Virginia, Department of Education return address.

When claiming the tax credit for the appropriate taxable year, an individual or business must attach this tax credit certificate to the applicable tax return. The credit will be allowed to be claimed beginning with the taxable year in which the monetary or marketable securities donation is made. The Department will provide a copy of the tax credit certificate to the scholarship foundation.

The Department may request the assistance of the Department of Taxation for purposes of determining whether or not donations for which tax credits are requested by a donor qualify for state tax credits.

### **Required disbursement of tax credit-derived donations for scholarships**

An approved scholarship foundation must disburse tax credit-derived donations for scholarships as required in Section 58.1-439.28 A of the *Code of Virginia*. Disbursement means the date that the donated scholarship funds are paid by an approved scholarship foundation to an eligible school. Effective for program years ending on or after June 30, 2013, a scholarship foundation must disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued) during the program year ending on June 30 by the immediately following June 30 for qualified education expenses through scholarships to eligible students. Tax credit-derived funds not used for such scholarships may only be used for the administrative expenses of the program.

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Pursuant to Section 58.1-439.28 A of the *Code of Virginia*, a scholarship foundation that fails to disburse at least 90 percent of the value of the donations it receives (for which tax credits were issued) within the appropriate one-year period will be subject to the following penalties:

1. For the first offense, the scholarship foundation will be required to pay a civil penalty equal to 200 percent of the difference between 90 percent of the tax credit derived donations it received in the applicable 12-month period and the amount that was actually disbursed. The scholarship foundation must remit the civil penalty to the Department within 30 calendar days after the end of the one-year period.
2. For a second offense within a five-year period, the scholarship foundation will be removed from the list of approved scholarship foundations, prohibited from requesting a preauthorized amount of tax credits on behalf of the donor, and prohibited from receiving and administering additional tax credit-derived funds for two years. After two years, the scholarship foundation may reapply to the Department to become an approved scholarship foundation and receive and administer tax credit-derived funds. If a scholarship foundation is authorized by the Department to be added to the list of approved scholarship foundations, the applicant scholarship foundation will not be considered to have any previous offenses.

A scholarship foundation that fails to meet the above disbursement requirements will not be subject to the actions in Section 58.1-439.28 A of the *Code of Virginia* when such failure is due to an eligible student forfeiting a previously issued scholarship supported by such donation.

### **Annual foundation report to the Department**

By September 30 of each year, beginning September 2016, on a reporting template provided by the Department, all scholarship foundations must provide the following information to the Department and certify its completeness and accuracy: (i) the total number and value of donations received by the foundation during the 12-month period ending on June 30 of the prior calendar year for which tax credits were issued by the Department; (ii) the dates when such donations were received; and (iii) the total number and dollar amount of qualified educational expenses scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation during the 24-month period ending on June 30 of the current calendar year.

The annual foundation report must include the following information:

1. Name of the scholarship foundation, contact person and contact information.
2. The name of the school division in which the student recipient of the educational expenses scholarship resides.
3. The name of the private school that the student recipient of the educational expenses scholarship attended.
4. The total number and value of donations received by the foundation during the 12-month period ending June 30 of the prior and current calendar years.

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5. The value of each donation received by the foundation for which tax credits were issued during the 12-month period ending June 30 of the prior and current calendar years.
6. The value of each qualified educational expenses scholarship disbursed during the 24-month period ending June 30 of the current calendar year.
7. The date that each qualified educational expenses scholarship was disbursed during the 24-month period ending June 30 of the current calendar year.
8. The amount of the actual educational expenses to educate the student at the private school during the 24-month period ending June 30 of the current calendar year.
9. The total dollar amount of qualified educational expenses scholarships disbursed during the 24-month period ending June 30 of the current calendar year.

Pursuant to Section 58.1-439.28 B of the *Code of Virginia*, any scholarship foundation that fails to provide this certified report to the Department by September 30 each year will be subject to the following penalties:

1. For the first offense, the scholarship foundation will be required to pay a \$1,000 civil penalty. The civil penalty must be remitted to the Department by November 1 of the same year.
2. For a second offense within a five-year period, the scholarship foundation will be removed by the Department from its list of approved scholarship foundations and will not be permitted to request preauthorization for additional tax credits, nor will it be permitted to receive and administer additional tax credit-derived funds. After two years, the scholarship foundation may reapply to the Department to become an approved scholarship foundation and receive and administer tax credit-derived funds. If a scholarship foundation is authorized by the Department to be returned to the list of approved scholarship foundations, the applicant scholarship foundation will not be considered to have any previous offenses.

Scholarship foundations subject to these actions due to failure to meet the September 30th reporting deadline will be notified by the Department of such actions by U.S. Mail.

### **Requirements for awarding scholarships**

In awarding scholarships from tax credit-derived funds, scholarship foundations must (i) provide scholarships for qualified educational expenses only to eligible students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or to eligible students with a disability; (ii) not limit scholarships to students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Applicant scholarship foundations must provide an assurance in the initial application to the Department that they will comply with items (i) through (iii) of this paragraph.

Documentation must be maintained by the scholarship foundation that demonstrates it does not limit scholarships to students of one school. This may be in the form of a written policy of the

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scholarship foundation, an indication of such policy on its public website, or published on its public website, a list of eligible schools that students it has awarded scholarships currently attend.

Notwithstanding the requirement in Section 58.1-439.28 C of the *Code of Virginia* not to limit scholarships to eligible students of one school, donors may designate or limit their donations, and scholarship foundations may designate or limit their scholarship awards, to a particular group of eligible schools where scholarships may be used by eligible students, as long as the eligible student's parent or legal guardian selects the eligible school where the scholarship will be used among those in the designated or limited group. In order to safeguard the 501(c)(3) status of approved scholarship foundations, with such status required under Section 58.1-439.25 A of the *Code of Virginia* to qualify as a scholarship foundation, a donor is not permitted to designate a specific eligible student to be the recipient of a scholarship that is derived from the donor's monetary or marketable securities donation.

Scholarship foundations are required to develop application procedures to award scholarships to eligible students. A scholarship foundation must not award tax credit-derived funds to a school without having awarded a scholarship to an eligible student. In no case shall a private school be responsible for determining the amount of a tax credit-derived scholarship awarded to an eligible student.

A scholarship foundation must confirm and maintain written documentation that students to whom it awards scholarships meet the criteria contained in Section 58.1-439.25 of the *Code of Virginia* and these guidelines of an 'eligible student with a disability', or an eligible student whose family annual household income does not exceed 300 percent of the current poverty guidelines. A scholarship foundation must rely on the U.S. Census Bureau's definition of income, which is used for computing poverty statistics, and the U.S. Census Bureau's definition of household in order to determine if a student's family household income is not in excess of 300 percent of the current federal poverty guidelines, or 400 percent if the student is an eligible student with a disability.

Payment of scholarships from tax credit-derived funds by eligible scholarship foundations must be by individual warrant or check made payable to and mailed to the eligible school that the eligible student's parent or legal guardian indicates, notwithstanding the allowance for donors and scholarship foundations to designate or limit the use of scholarships at a particular group of eligible schools. In mailing such scholarship payments, the eligible scholarship foundation must include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same.

Pursuant to Section 58.1-439.28 F of the *Code of Virginia*, scholarship foundations must develop procedures for disbursing scholarships in quarterly or semester payments throughout the school year to ensure scholarships are portable for the eligible students awarded the scholarships. Portability means that an eligible student, once awarded a scholarship amount, may use all or a portion of it at any eligible school in the Commonwealth.

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### **Requirements for schools selected by scholarship students**

Scholarship foundations must ensure that schools selected by eligible students to which tax credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic school accreditation requirements as set forth in Section 22.1-19 of the *Code of Virginia*, and administered by the Virginia Council for Private Education (VCPE) or nonpublic schools that maintain an assessment system that annually measures scholarship students' progress in reading and math using a national norm-referenced achievement test including, but not limited to, the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills. Any other achievements tests used for this purpose must have been developed using a norm group that is representative of the United States.

Pursuant to requirement (iv), if the private school is not accredited by VCPE, or one of its accrediting agencies, then the private school must annually administer a norm-referenced achievement test to all kindergarten through 12<sup>th</sup> grade students that have received tax credit-derived scholarships.

Scholarship foundations should ensure that eligible schools meet items (i) through (iv) in the preceding paragraph by obtaining an assurance statement signed by the Head of School in which the Head of School attests that the eligible school meets these requirements, and by obtaining the appropriate documentation in support of items (i), (ii) and (iv). The assurance statement and supporting documentation must be kept on file by the scholarship foundation.

The Department may remove a scholarship foundation from its annual list of approved scholarship foundations that are eligible to receive tax credit eligible donations if a scholarship foundation awards a scholarship to an eligible student at a private school that does not meet any of the requirements specified above, including one of the two criteria provided in requirement (iv).

### **Student achievement reporting requirements for eligible schools**

Eligible schools must meet the annual reporting requirements for national norm-referenced achievement tests and graduation rates in Section 58.1-439.28 D of the *Code of Virginia*. However, eligible schools that comply with nonpublic school accreditation requirements as set forth in Section 22.1-19 of the *Code of Virginia*, and administered by the VCPE are not subject to the norm-referenced achievement test reporting requirement when such eligible school does not administer national norm-referenced achievement tests at the grade level in which eligible students receiving tax credit-derived scholarships are enrolled for that school year.

Any non-accredited school must administer a norm-referenced achievement test to every kindergarten through 12<sup>th</sup> grade student that received a tax credit-derived scholarship and report the test scores to the Department in accordance with the requirements stated above. If a non-accredited school fails to test such scholarship students, the scholarship foundation that awarded the scholarships may be removed the annual list of approved scholarship foundations that are eligible to receive tax credit eligible donations.

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The annual student achievement report is to be provided to the Department by November 1 of each year, following the first year of testing of an eligible student receiving a tax credit-derived scholarship while enrolled in an eligible school. The report must include the following information from the immediately preceding school year:

1. Demographic information: grade level, gender, race/ethnicity, school division in which the student resides, family income level, and number persons in the student's family/household;
2. Program information: the number of years each eligible student has been tested, the number of years the student has been in the Education Improvement Scholarships Tax Credits Program, name of the scholarship foundation(s) awarding the scholarship(s);
3. Student achievement test information: the name of the norm-referenced achievement test that was administered, achievement test results and associated learning gains for reading and math, including the national percentile ranking for the eligible student's test scores, the corresponding normal curve equivalent, whether the school is accredited by the VCPE; and
4. Graduation information: graduation rates (if applicable) of its eligible students participating in the scholarship program in a manner consistent with nationally recognized standards.

In accordance with federal and state student privacy laws, the eligible student's name or any other personal information that may be used to identify the eligible student must not be included in the annual student achievement report.

Reporting of eligible student race for purposes of this reporting requirement is based on the standard federal Office of Management and Budget racial/ethnic categories.

The national standard used for reporting required annual graduation rate data to the Department is the Federal Graduation Indicator (FGI). Eligible schools with graduating eligible students receiving a tax credit-derived scholarship must submit the eligible\_student numerator and denominator totals needed for the FGI graduation rate calculation in a format and using instructions provided by the Department. Only aggregated data totals are submitted for all scholarship students in the school; submission of individual eligible student data or eligible student demographic data related to graduation rate is not required. Eligible schools that do not graduate eligible students receiving a tax credit-derived scholarship are not subject to the graduation rate reporting requirement.

Eligible schools subject to the reporting requirements of the preceding paragraphs are required annually to submit the student-level test data and school-level graduation rate data to the Department, via the Department's secure Web-based system, using a reporting template provided by the Department that includes the required eligible\_student classifications. An eligible VCPE accredited school with an eligible student that has received a tax credit-derived scholarship but was not administered a national norm-referenced achievement test during the school year, is still required to submit the report without such test information and include a statement within the reporting template that explains why such test information was not provided. In addition, if there

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are no eligible students scheduled to graduate from an eligible school at the conclusion of the school year, the eligible school is still required to submit the annual school-level graduation rate data report to the Department and include a statement within the reporting template that explains why such graduation information was not provided.

In publishing achievement test results on the Department website pursuant to Section 58.1-439.28 D of the *Code of Virginia*, 'aggregate form' means reporting the test data by the eligible student classifications across all eligible students for which testing data is submitted; it does not mean reporting by individual eligible school or by individual eligible student. The Department will not publish the aggregate test results for any reporting category that consists of less than 30 students to protect personally identifiable information. The Department requires schools to report the composite national percentile ranks. The Department may publish the aggregate of all the graduation rates among all the eligible schools.

### **Annual eligible student scholarship limit**

The aggregate amount of scholarships provided to each eligible student for any single school year by all eligible scholarship foundations from eligible donations may not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per pupil amount distributed to the school division (in which the student resides) as the state's share of the Standards of Quality (SOQ) costs using the composite index of ability to pay as defined in the state appropriation act.

Example 1. The educational expenses for the school year to educate a student at Private School A total \$5,500. The SOQ cost for the school district in which the student resides is \$5,000. The maximum scholarship amount that can be awarded to the student at Private School A in quarterly or semester payments cannot exceed \$5,000.

Example 2. The educational expenses for the school year to educate a student at Private School B total \$4,500. The SOQ cost for the school district in which the student resides is \$5,000. The maximum scholarship amount that can be awarded to the student at Private School B in quarterly or semester payments cannot exceed \$4,500.

The Department will publish on its website the state Standards of Quality per pupil funding amount for each school division that relates to the upcoming school year. Final per pupil amounts that relate to the upcoming school year will be posted to the Department website as soon as possible following the signing of the final state budget into law by the Governor.

A scholarship foundation is permitted to award a scholarship to an eligible student that enrolled in an eligible private school after the school year begins, provided that such scholarship is based on the education expenses the student incurred while enrolled at the eligible private school. If an eligible student enrolls in an eligible private school during a quarter or semester of a school year, then the scholarship amount must not exceed the expenses for educating the student for the remainder of the school year or the SOQ amount, whichever is less.

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Example 3. An eligible student enrolls in Private School C in November for the school year that begins in August. The educational expenses for the school year to educate a student at Private School C total \$12,000 (\$6,000 per semester or \$3,000 per quarter). The SOQ cost for the school district in which the student resides is \$4,000. The maximum scholarship amount for the school year that can be paid to Private School C on behalf of the student is \$4,000 since the SOQ amount would be less than the semester expenses for the school year. Under this scenario, \$3,000 may be paid for the first semester and the remaining \$1,000 may be paid for the second semester. If the student decides to transfer to another eligible private school in Virginia, then the remaining \$1,000 would be paid to the new school. If the student decides to transfer to a public school, the foundation must provide a \$1,000 scholarship to an eligible student to attend a private school in Virginia, within the requisite disbursement time period.

Example 4. The facts are the same as stated in Example 3, except the student enrolls in Private School C during the month of April. The maximum scholarship amount that could be awarded to the student would be \$3,000, which is equal to the expenses to attend Private School C for the last quarter of the school year or the SOQ amount for the school district in which the student resides, whichever is less.

If the student is enrolled in a private school but leaves to enroll in another eligible private school, any unpaid quarterly or semester payments must be allowed to be used to attend the private school the student transfers to. In the event that a student enrolled in a private school leaves to enroll in a public school, any unpaid quarterly or semester payments may be used by the scholarship foundation to provide a scholarship to another eligible student attending an eligible private school.

Each eligible school is responsible for keeping track of the amount of tax credit-derived scholarship funds received for each eligible student for each school year. In the event that excess scholarship funds beyond the maximum permitted in Section 58.1-439.28 E of the *Code of Virginia* are received for an eligible student, the school is responsible for returning the excess funds to the appropriate scholarship foundation within 30 calendar days. In addition, eligible schools should expend all of the tax credit-derived scholarship funds they receive for that school year on qualified educational expenses of eligible students attending the school that school year.

### **Annual financial summary report**

Pursuant to Section 58.1-439.28 H of the *Code of Virginia*, scholarship foundations are required to conduct an annual audit, review, or compilation, of their tax credit-derived funds as determined by the foundation's amount of total revenues for the most recent fiscal year. Foundations with total revenues in excess of \$100,000 shall have an audit or review performed by an independent certified public accountant of the foundation's donations received in each year for which tax credits were issued. Foundations of \$100,000 or less shall have a compilation performed by an independent certified public account of the foundation's donations received in each year for which tax credits were issued. The audit, review, or compilation must be made

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available to the Department within nine months after the end of the foundation's fiscal year and to the public upon request.

### **Actions exempt from Administrative Process Act; decisions not subject to review or appeal**

Actions of the Superintendent of Public Instruction or the Department relating to the issuing of tax credits and the qualification of scholarship foundations are exempt from the provisions of the Administrative Process Act (Section 2.2-4000 et seq. of the *Code of Virginia*). Decisions of the Superintendent of Public Instruction or the Department are final and not subject to review or appeal.