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[4831-GV-p

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-119986-25]

RIN 1545-BS05

Racial Nondiscrimination in Private Schools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would update existing regulations to provide that a private school is not described as an organization exempt from Federal income tax if it discriminates on the basis of race, color, or national or ethnic origin in administration of its educational, admissions, scholarship, athletic, or other policies, based on the fundamental public policy of the United States against such practices. These proposed regulations would affect private schools in taxable years beginning after May 31, 2027, which is after the final regulations are expected to be published.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-119986-25) by following the online instructions for submitting comments. In accordance with 5 U.S.C. 553(b)(4), a plain language summary of these proposed regulations is also available on the Federal eRulemaking Portal. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a

Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-119986-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-6000 (not a toll-free number); concerning submission of comments or requests for a public hearing, the Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that would add a new §1.501(c)(3)-2 issued under section 501(c)(3) of the Internal Revenue Code (Code).

These proposed regulations are issued pursuant to section 7805(a) of the Code, which authorizes the Secretary of the Treasury or the Secretary's delegate to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

I. Statute and applicable regulations

Section 501(c)(3) describes, in part, organizations that are organized and operated exclusively for "charitable … or educational purposes" provided certain restrictions on private inurement, lobbying, and intervention in political campaigns are not violated. Such organizations are generally exempt from Federal income tax by section 501(a). Section 170 of the Code provides, in part, a deduction to taxpayers who make “charitable contributions” to organizations specified in section 170(c)(2), which essentially mirrors the description of organizations satisfying the requirements of section 501(c)(3). In determining the amount of a taxpayer’s deduction allowed under section 170(a) within the taxable year, section 170(b)(1)(A)(ii) includes any charitable contribution to an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Section 1.170A-9(c)(1) provides that an “educational organization” is described in section 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools that otherwise come within the definition.

Sections 170(c)(2), 170(b)(1)(A)(ii), and 501(c)(3) do not further define the terms “charitable” or “educational” or explain what it means to be organized and operated exclusively for such purposes.

For over 65 years, however, the provisions of §1.501(c)(3)-1 have provided guidance on the interpretation of the terms “charitable” and “educational” as used in section 501(c)(3). Section 1.501(c)(3)-1(a) provides that, in order to be exempt under section 501(a) as an organization described in section 501(c)(3), the organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3), as defined and elaborated in §1.501(c)(3)-1(d). Thus, an organization that fails to meet either the "organizational test" set forth in §1.501(c)(3)-1(b) or the "operational test" set forth in §1.501(c)(3)-1(c) is not exempt from Federal income tax.

Section 1.501(c)(3)-1(d)(1) provides a list of purposes that would allow an organization to be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the exempt purposes specified in section 501(c)(3), which list includes charitable and educational purposes. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes that may fall within the broad outlines of "charity" as developed by judicial decisions. In addition, §1.501(c)(3)-1(d)(2)(ii) states that the term includes the "promotion of social welfare by organizations designed to … eliminate prejudice and discrimination."

Similar to the description of an educational organization in section 170(b)(1)(A)(ii), §1.501(c)(3)-1(d)(3)(ii), (*Example 1*), provides that a primary or secondary school, a college, or a professional or trade school, that has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on may qualify for exemption as an educational organization of the character contemplated by section 501(c)(3) if it otherwise meets the requirements of section 501(c)(3).

II. <u>Policy of the United States against racial discrimination in education</u>

On May 17, 1954, the Supreme Court of the United States decided *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), in which the Court held that state-sanctioned racial segregation of public schools violates the Equal Protection Clause of the Fourteenth Amendment. One year later, the Court reiterated that "full compliance" with *Brown* required public schools to admit the students that had sued "on a racially nondiscriminatory basis." *Brown v. Board of Education*, 349 U.S. 294, 300–301 (1955).

Enacted into law on July 2, 1964, Title VI of the Civil Rights Act of 1964 states, in relevant part, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In 1976, the Supreme Court decided the case of *Runyon v. McCrary*, 427 U.S. 160, holding that 42 U.S.C. 1981 (Section 1981)[1] bars a private school from discriminating against applicants based on their race. The same year, the Supreme Court confirmed that the protections of Section 1981 apply equally to all persons regardless of race. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 295 (1976).

On June 30, 1971, the United States District Court for the District of Columbia entered an order permanently enjoining the Treasury Department and the IRS from recognizing as described in section 501(c)(3) any private school located in the State of Mississippi that failed to adopt, publish, and operate under a racially nondiscriminatory policy as to students and that failed to supply the IRS with certain information to ensure operation on a nondiscriminatory basis. *Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971), *aff'd sub nom.*, *Coit v. Green*, 404 U.S. 997 (1971). The court stated that "[t]he Code must be construed and applied in consonance with the Federal public policy against support for racial segregation of schools, public or private." *Id*. at 1163. The court declared that section 501(c)(3) "does not provide a tax exemption for ...any

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[1]Section 1 of the Civil Rights Act of 1866 is codified at 42 U.S.C. 1981 and provides that all persons in the United States shall have the same right to "make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

organization that is operated for educational purposes unless the school or other educational institution involved has a racially nondiscriminatory policy as to students." *Id*. at 1179. It further declared that this requires that "the school or other educational institution admits the students of any race to all the rights, privileges, programs and activities generally accorded or made available to students at that school, and which includes, specifically but not exclusively, a policy of making no discrimination on the basis of race in administration of educational policies, applications for admission, of scholarship and loan programs, and athletic and extra-curricular programs." *Id*.

That year, the IRS issued Rev. Rul. 71-447, 1971-2 C.B. 230, which states that a private school that does not have a racially nondiscriminatory policy as to students does not qualify for exemption from Federal income tax. Consistent with *Green v. Connally*, the revenue ruling defines a "racially nondiscriminatory policy as to students" as meaning that the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs. In support, the revenue ruling states, "All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy," citing to common law concepts of charity and the Restatement of Trusts.[2] The revenue ruling acknowledges that Federal statutory law does not prohibit the operation of private schools on a discriminatory basis, but states that the policy of the United States is to discourage discrimination in such schools. The revenue ruling cites to the "well-settled" Federal policy against discrimination in many areas of wide public interest and to "developments

[2] The Restatement of Trusts is a treatise published by the American Law Institute that restates and clarifies the common law of trusts in the United States.

of recent decades and recent years reflect[ing] a Federal policy against racial discrimination which extends to racial discrimination in education. Titles IV and VI, The Civil Rights Act of 1964 . . . and *Brown v. Board of Education* . . . and many subsequent Federal court cases, demonstrate a national policy to discourage racial discrimination in education, whether public or private."

Based on the permanent injunction in *Green v. Connally*, the IRS also issued Rev. Proc. 75-50, 1975-2 C.B. 587, modified by Rev. Proc. 2019-22, 2019-22 I.R.B. 1260, to set forth guidelines and recordkeeping requirements for determining whether private schools that apply for recognition of exemption from Federal income tax under section 501(c)(3), or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students. Section 3.01 of Rev. Proc. 75-50 defines a "racially nondiscriminatory policy as to students" by reference to policies addressed by Rev. Rul. 71-447. The first sentence of section 3.02 of Rev. Proc. 75-50 clarifies that "discrimination on the basis of race" includes discrimination on the basis of color and national or ethnic origin. The second sentence of section 3.02 of Rev. Proc. 75-50 states that a "policy of a school that favors racial minority groups with respect to admissions, facilities and programs, and financial assistance will not constitute discrimination on the basis of race when the purpose and effect is to promote the establishment and maintenance of that school's racially nondiscriminatory policy as to students." Likewise, the third and fourth sentences of section 4.05 of Rev. Proc. 75-50 state: "Consistent with section 3.02, *supra*, scholarships and loans that are made pursuant to financial assistance programs favoring members of one or more racial minority groups that are designed to promote a school's racially nondiscriminatory policy will not adversely affect the school's exempt status. Financial assistance programs favoring members of one or more racial groups that do not significantly derogate from the school's racially nondiscriminatory policy similarly will not adversely affect the school's exempt status."

On May 24, 1983, the Supreme Court decided *Bob Jones University v. United States*, 461 U.S. 574 (1983). In that case, the Court held that the IRS did not exceed its authority when it announced its interpretation of section 501(c)(3) in Rev. Rul. 71-447, and upheld the IRS's revocation of the section 501(c)(3) status of Bob Jones University and the Goldsboro Christian Schools, Inc. These schools maintained racially discriminatory policies promoting racial segregation, which the Court held were contrary to a fundamental public policy. *Id*. at 593. The Court reasoned that, in analyzing section 501(c)(3), there was unmistakable evidence that entitlement to a tax exemption depends on meeting a "charitable" standard under common law; that is, serving a public purpose and not being contrary to established public policy. *Id*. at 586. The Court further stated, "[a]n unbroken line of cases following *Brown v. Board of Education* establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals," specifying that "[t]he right of a student not to be segregated on racial grounds in schools . . . is indeed so fundamental and pervasive that it is embraced in the concept of due process of law." *Id*. at 593 (internal cites omitted). The court also cited to numerous acts of Congress, including the Civil Rights Act of 1964, and numerous executive orders "demonstrating the commitment of the Executive Branch to the fundamental policy of eliminating racial discrimination" for its conclusion that "[r]acially discriminatory educational institutions cannot be viewed as conferring a public benefit within the 'charitable' concept ... or within Congressional intent underlying § 170 and § 501(c)(3)." *Id*. at 595-96.

The authorities described in this Background section establish that racial discrimination in education violates a fundamental public policy of the United States and that schools engaging in racial discrimination are ineligible for section 501(c)(3) status.

III. Developments regarding racial discrimination in education

In the 1970s, some universities adopted “affirmative action” admissions policies considering race as one factor among others to increase the enrollment of racial minority students in their programs, and courts began to delineate constitutional limits, emphasizing that programs must be narrowly tailored and serve compelling interests. For example, the Supreme Court in *Regents of the University of California v. Bakke,* 438 U.S. 265 (1978), addressed whether the University of California violated the Fourteenth Amendment's Equal Protection Clause, and Title VI of the Civil Rights Act of 1964, by practicing an “affirmative action” policy that resulted in the repeated rejection of a white male's application for admission to its medical school.

The *Bakke* Court was divided. Led by Justice Stevens, four justices concluded that Title VI categorically prohibited using race as the basis for excluding persons from participation in federally funded programs, and that the use of racial quotas in university admissions constituted such an exclusion. 438 U.S. at 421. Four other justices, led by Justice Brennan, argued that Title VI’s prohibition on racial discrimination was coextensive with the Equal Protection Clause of the Fourteenth Amendment, that the Equal Protection Clause did not bar the use of race-based criteria that were designed to mitigate the effects of racial discrimination, and accordingly that the use of racial quotas in admissions was not illegal. 438 U.S. at 328, 362, 378. Justice Powell’s opinion announcing the judgment of the Court landed between these two camps. Powell concurred with Brennan that Title VI was coextensive with the Equal Protection Clause, but found that any race-based classification, even for a purportedly benign purpose, was subject to strict scrutiny. *Id*. at 299. Justice Powell held that the practice of setting a specific quota for specific racial groups could not survive strict scrutiny, but that an admissions program which was aimed at attaining the benefits of a diverse student body and treated race as just one element among many in an applicant’s profile was constitutionally permissible. *Id*. at 318-20. Thus, although the Court struck down the use of racial quotas, the Court allowed race to be considered as one of many factors to be considered in admissions.

Approximately 25 years later, the Supreme Court addressed in *Grutter v. Bollinger*, 539 U.S. 306 (2003), whether the University of Michigan Law School's use of racial preferences in student admissions violated the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964. Looking to Justice Powell's opinion in *Bakke*, the Court reiterated that maintaining the diversity of a university's student body was a compelling state interest which could justify race-conscious admissions policies. *Id*. at 325. The Court further found that the University of Michigan's policies were narrowly tailored to that interest because review of every student's application was highly individualized, race was one of many types of diversity considered in the process, and acceptance or rejection was not automatic based on the presence of a single variable such as race. *Id*. at 336-38. However, the Court noted that race-conscious admissions policies should be limited in time since "[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race." *Id*. at 341. The Court further stated that "racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands," so a permanent justification for racial preferences would be contrary to the principle of equal protection. *Id*. at 342. Justice O'Connor expressed an expectation that 25 years from the date of the opinion, "the use of racial preferences will no longer be necessary to further the interest approved today." 539 U.S. at 343 (internal citations omitted).

That same year, the Supreme Court, in *Gratz v. Bollinger*, 539 U.S. 244 (2003), addressed whether the University of Michigan's use of racial preferences in undergraduate admissions violated the Equal Protection Clause of the Fourteenth

Amendment and Title VI of the Civil Rights Act of 1964. The Court found that the undergraduate admissions policy of awarding automatic "points" for race was mechanical, not individualized, and made race a decisive factor in the admissions process. *Id.* at 271-72, 274. As such, the Court held that the undergraduate admissions policies were not sufficiently narrowly tailored to meet the strict scrutiny standard. *Id.* at 270. Because the policy did not provide individualized consideration of applicants but rather resulted in the admission of nearly every qualified applicant of "underrepresented minority" status, it was not narrowly tailored in the manner required by previous jurisprudence to not violate the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. *Id*.

In 2016, in *Fisher v. University of Texas*, 579 U.S. 365 (2016), the Supreme Court again addressed whether the Equal Protection Clause of the Fourteenth Amendment permits the consideration of race in undergraduate admissions decisions. The Court held that the race-conscious admissions program in use at the time by the University of Texas was lawful under the Equal Protection Clause. *Id.* at 388. That admissions program had been carefully crafted in light of *Grutter*, with the goal of providing the educational benefits of a diverse student body. The court found that the University had met its burden of showing that the admissions policy was narrowly tailored, although it noted that it "remains an enduring challenge to our Nation's education system to reconcile the pursuit of diversity with the constitutional promise of equal treatment and dignity." *Id*. at 368. The court observed that the University must continue to use its data about the manner in which different approaches to admissions may foster diversity or instead dilute it to scrutinize the fairness of its admissions program, to assess whether the changing demographics have undermined the need for a race-conscious admissions policy, and to study the positive and negative effects of its affirmative action measures. *Id.*

Most recently, the Supreme Court held in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), that the admissions policies of Harvard College and the University of North Carolina had employed unlawful racial discrimination in violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, respectively. The Court discussed the exacting nature of the strict scrutiny standard necessary to justify racial discrimination under the Equal Protection Clause, explaining that, "[o]ur acceptance of race-based state action has been rare for a reason. Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. That principle cannot be overridden except in the most extraordinary case." *Id*. at 208 (internal cites omitted). Ultimately, the Court found that these universities' race-based admissions policies did not survive strict scrutiny because they "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." *Id*. at 230. The Court found flaw with the dissenting opinions (which would have upheld the race-based admissions programs based on remedying the effects of societal discrimination), stating that "[i]n the years after *Bakke*, the Court repeatedly held that ameliorating societal discrimination does not constitute a compelling interest that justifies race-based state action." *Id*. at 226.

Explanation of Provisions

These proposed regulations would provide that all forms of racial discrimination in education, regardless of the intent behind or the legality of such discrimination (for example, where such discrimination is defended as serving remedial or diversity-related objectives), are against a fundamental public policy of the United States and thus preclude a school's exemption from Federal income tax under section 501(c)(3). In so doing, the proposed regulations would make clear that discriminating based on race, color, or national or ethnic origin for any purpose by a private school is contrary to a fundamental public policy of the United States. This public policy is evidenced by antidiscrimination law such as the Equal Protection Clause of the Fourteenth Amendment, the Civil Rights Act of 1964, Supreme Court case law such as *Brown* to *Runyon* to *Bob Jones* to *Students for Fair Admissions*, and the actions taken by the Executive Branch to ensure racial nondiscrimination is instituted throughout the United States.[3]

If these regulations are finalized as proposed, certain portions of Rev. Proc. 75-50, concerning private schools favoring racial minority groups with respect to admissions, facilities and programs, and financial assistance, would be incompatible with the new rules. Accordingly, Rev. Proc. 75-50, as modified by Rev. Proc. 2019-22, would be modified by deleting the second sentence of section 3.02 and the third and fourth sentences of section 4.05. Consistent with these proposed rules, these modifications would take effect with respect to taxable years of private schools beginning after May 31, 2027, which is expected to be after the date of publication of final regulations in the ***Federal Register***: Apart from these modifications, Rev. Proc. 75-50 (as modified by Rev. Proc. 2019-22) would remain in effect.

For the avoidance of any doubt, the proposed regulations would not preclude a private school from maintaining a religious mission, curriculum, or program of observance, or from selecting students on the basis of religious affiliation or membership. Use of a religiously based selection criterion does not become discrimination on the basis of race, color, or national or ethnic origin merely because members of the relevant religious community may also share ancestry or ethnic

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[3] *See, e.g.*, Executive Order 10730 (22 FR 7628; Sep. 24, 1957) (authorizing the use of the National Guard to enforce the desegregation of public schools in Little Rock, Arkansas); Executive Order 14173 (90 FR 8633; Jan. 21, 2025) (directing agency heads to create plans to deter illegal discrimination, including at institutions of higher education); Executive Order 14280 (90 FR 17533; April 23, 2025) (directing the Secretary of Education and Attorney General to take action aimed at preventing racial discrimination in school disciplinary systems).

characteristics (so long as the selection criteria is based solely on religion and not on shared ancestry or ethnic characteristics). Similarly, the proposed regulations would not disturb the continued ability of an organization (including a private school) to take actions or adopt policies intended to eliminate prejudice and discrimination, consistent with existing §1.501(c)(3)-1(d)(2), provided the organization achieves these purposes by means other than actions or policies that discriminate on the basis of race, color, or national or ethnic origin.

Incorporating the long-standing holding of Rev. Rul. 71-447 in regulatory text and removing the language in Rev Proc. 75-50 as to the favoring of racial minority groups to further a school's racially nondiscriminatory purpose would allow for more consistent application of Federal tax law across the United States and make clear to all private schools (that is, all private primary and secondary schools, colleges, professional or trade schools, and universities) the need to eliminate all impermissible racially discriminatory policies incompatible with the benefit of Federal income tax exemption. The proposed regulations would achieve this result by stating a clear, enforceable standard: private schools cannot qualify as “operated exclusively for exempt purposes” within the meaning of section 501(c)(3) if they adopt, maintain, or enforce any policy or practice that discriminates on the basis of race, color, or national or ethnic origin in the administration of any educational policy, admissions policy, scholarship or loan program, athletic program, or other school-administered or supported program.

The proposed regulations would achieve these objectives by adding a new §1.501(c)(3)-2 to 26 CFR part 1.

Proposed §1.501(c)(3)-2(a) would provide the general rule that a private school (as defined in proposed §1.501(c)(3)-2(c)) must be operated exclusively for exempt purposes (within the meaning of §1.501(c)(3)-1(d)) to be an organization described in section 501(c)(3). It would also provide that a private school that fails to satisfy the nondiscrimination requirement of proposed §1.501(c)(3)-2(b) will not be exempt from Federal income tax under section 501(c)(3) with respect to taxable years beginning after May 31, 2027, which is after the date final regulations are expected to be published in the ***Federal Register***.

Proposed §1.501(c)(3)-2(b) would provide that a private school is not “operated exclusively for exempt purposes” if it adopts, maintains, or enforces any policy or practice that discriminates on the basis of race, color, or national or ethnic origin in the administration of any educational policy, admissions policy, scholarship and loan program, athletic program, or other school-administered or school-supported program. Proposed §1.501(c)(3)-2(b) would add that, for this purpose, policies or practices that discriminate on the basis of race, color, or national or ethnic origin include policies or practices that so discriminate for any purpose.

Lastly, proposed §1.501(c)(3)-2(c) would provide that for purposes of proposed §1.501(c)(3)-2, the term “private school” means an organization that (determined without regard to the nondiscrimination requirement of paragraph (b)) is described in section 501(c)(3) and classified as an educational organization described in section 170(b)(1)(A)(ii) (that is, any private primary or secondary school, college, professional or trade school, or university). The term does not include a governmental unit, an agency or instrumentality of a governmental unit, or an organization owned or operated by an agency or instrumentality of a governmental unit.

The proposed regulations are intended to clarify the law applicable to qualification for the Federal tax exemption of private schools, which would eliminate ambiguity and ensure consistent application across all private schools. The proposed regulations would also provide administrative certainty for IRS personnel and ensure that Federal income tax exemption does not benefit racially discriminatory practices in education.

Proposed Applicability Date

The Treasury Department and the IRS expect to finalize these regulations, with any necessary modifications based on timely comments received, in advance of May 31, 2027. These regulations are proposed to apply to taxable years of private schools beginning after May 31, 2027. This proposed applicability date will allow any private schools that may need to amend their existing policies, including admissions or scholarship policies, to do so before the beginning of any taxable year to which the final regulations are expected to apply.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. Need for Regulation

The proposed regulations would provide that a private school which discriminates on the basis of race, color, or national or ethnic origin in the administration of its policies is not operated “exclusively for charitable purposes.” Therefore, a private school which engages in racial discrimination cannot qualify for exemption from Federal income tax. Consistent with recent developments in the law,[4] these regulations hold that racial discrimination in education is impermissible, regardless of its intent (for example, to ameliorate the effects of past racial discrimination).

B. The Statute and the Proposed Regulations

The proposed regulations would provide that a private school cannot meet the definition of an organization exempt from Federal income tax if it discriminates on the basis of race, color, or national or ethnic origin in administration of its educational, admissions, scholarship, athletic, or other policies. It would further define race-based action for the purpose of ameliorating societal discrimination as a form of discrimination. These regulations would apply to private primary, secondary, preparatory, or high schools, as well as colleges and universities, for taxable years beginning after May 31, 2027.

C. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

D. Affected Entities and Taxpayers

The Treasury Department and the IRS estimate that the proposed regulations may affect the 18,000 private elementary, secondary, and post-secondary schools in the United States that currently qualify for tax exempt status and the 750,000 students attending these schools who may qualify for scholarships allocated on the basis of

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[4] *See Students for Fair Admissions v. President and Fellows of Harvard College,* 600 U.S. 181 (2023) (*SFFA*).

racial, ethnic, or national identity.[5] In addition, the Treasury Department and the IRS estimate that the proposed regulations may also affect taxpayers who donate to scholarship funds administered by private schools, and that use racial criteria to determine eligibility to receive scholarship funds. The Treasury Department and the IRS do not have readily available parameters and models to quantify the number of taxpayers who make charitable contributions to support race-based scholarship funds administered by private schools.

E. Economic Effects of the Proposed Regulations

As postsecondary schools have already changed their admissions policies following the Supreme Court's decision in *Students for Fair Admissions* (*SFFA)*, the Treasury Department and the IRS anticipate that all economic effects of this proposed regulation on postsecondary schools will follow from the requirement to apply such definition of discrimination to the administration of scholarship and loan policies.

The Treasury Department and the IRS expect that all private primary and secondary schools will adjust their admissions criteria to conform to the proposed regulations, so that they may retain their tax-exempt status.[6] The proposed regulations provide that to maintain tax exempt status, schools may not discriminate on the basis of race in their admissions policies, but the Treasury Department and the IRS are not

[5] The Treasury Department and the IRS do not collect information on race or ethnicity. The number of students potentially qualifying for scholarships based on race or ethnicity is estimated using a survey conducted by the GAO, (Linda G. Morra, "Higher Education: Information on Minority-Targeted Scholarships," U.S. Government Accountability Office (GAO), HEHS-94-77, January 14, 1994; last accessed February 19, 2026. *https://www.gao.gov/assets/hehs-94-77.pdf).*

[6] Private primary and secondary schools were not directly affected by *SFFA.* However, following *SFFA,* several prominent advisors to private primary and secondary schools anticipated that this decision would ultimately come to apply to K-12 private schools as well, and advised schools to adapt their admissions processes accordingly. Treasury and the IRS therefore anticipate that a subset of these schools have already changed their admissions policies to reflect a definition of discrimination close to the one in the proposed rule. Smith, Kristin L. 2023. "6 Steps for Private and Independent Schools in the Wake of the SCOTUS Affirmative Action Ruling." *https://www.fisherphillips.com/en/insights/insights/private-and-independent-schools-scotus-affirmative-action-ruling.* Pass, Caryn G., Grace H. Lee, Janice P. Gregerson, and Ashley E. Sykes. 2023. "No More Affirmative Action: What Does the Supreme Court's Decision Mean for Independent Schools?" *https://www.venable.com/insights/publications/2023/07/no-more-affirmative-action-what-does*.

aware of any data that would provide the extent to which private primary and secondary schools currently discriminate on the basis of race and ethnicity when admitting students. Further to the extent that the number of primary and secondary students being educated is unchanged, it is expected that the change in the racial composition of primary and secondary students among public and private primary and secondary schools will have a minimal effect on primary and secondary student outcomes or economic growth in general. The Treasury Department and the IRS also do not have the data to model the cost to schools (that currently discriminate based on race or ethnicity) of changing admission criteria to maintain compliance. Low-cost options to maintain compliance may be available to many schools, but some schools may choose higher cost options in order to meet other objectives. To the extent that primary and secondary schools have preemptively adjusted admission criteria in the wake of the *SFFA* decision regarding postsecondary schools and to the extent that low cost compliance options are available (even if not chosen), compliance costs with regard to private primary and secondary school admission would be minimal.

The proposed regulations are not expected to affect private school athletic programs where inclusion is generally based on athletic ability, not race or ethnicity. Further, while the proposed regulations might also affect any other school-supported programs or education policies administered by private schools, the Treasury Department and the IRS assume that any economic effects arising from this relatively narrow, miscellaneous group of activities would be insignificant.

The proposed regulations are expected to have three types of economic effects on private school financial aid policies. First, private schools may incur some legal and administrative costs as they endeavor to comply with the proposed regulations. Second, the proposed regulations may affect the distribution of scholarship and loan funds among the population of students. Third, the proposed regulations may affect the charitable giving behavior of donors who wish to provide scholarships or loans where race, ethnicity, or national origin are included in the set of eligibility criteria. In all cases, if these nondiscrimination rules are finalized as proposed, the Treasury Department and the IRS expect that private schools will comply in order to maintain their tax-exempt status. This assumption is based on the observed compliance with the Supreme Court ruling in *SFFA*.[7]

1. Compliance costs for private schools

Private schools may incur some legal and administrative costs as they endeavor to comply with the proposed regulations. These costs will depend, in part, on the legal circumstances under which a race-based scholarship was created. In the event that a race-based scholarship was endowed by a donor, whose letter of intent explicitly stated that eligibility relies on race-based criteria, schools may need to work with the donors, or the donors' heirs, to find an alternative set of eligibility criteria for the scholarship recipients. This process will incur administrative and legal costs. The Treasury Department and the IRS do not have readily available parameters or models to precisely assess the extent of such costs. However, only a minority of scholarship

[7] Prior to *SFFA,* experts anticipated that a race-blind admissions policy would impact the racial composition at only the most selective institutions, reducing the share of their student body which comes from historically underrepresented racial, ethnic, or national groups, and correspondingly increasing the share of other students represented on these campuses (Reber, Goodman, and Nagashima (2023)). Recent research finds evidence that *SFFA* has had this expected effect on admissions. In the year following *SFFA,* the shares of Black, Native American, Hispanic/Latino, Native Hawaiian, and Pacific Islander students enrolled at the most selective schools fell (Snider, 2026). These findings are corroborated by Bloem et al. (2026), which further shows that these students instead enrolled at less-selective schools, while the highest-achieving students belonging to other races, ethnicities, and nationalities, and residing in low-income neighborhoods, were more likely to attend "Ivy Plus" colleges following *SFFA.* As the anticipated effect of this policy has thus far been borne out in empirical data, this evidence is consistent with compliance with the Supreme Court ruling in *SFFA.* Bloem, Michael D., Ashley Edwards, J. Parker Goyer, Jessica Howell, Xiaowen Hu, Michael Hurwitz, Samuel J. Imlay, Jennifer Ma, and Matea Pender. 2026. "College Enrollment Patterns After SFFA v. Harvard." EdWorkingPaper: 26-1392. Retrieved from Annenberg Institute at Brown University: https://doi.org/10.26300/6a7w-bq06. Reber, Sarah, Gabriela Goodman, and Rina Nagashima. 2023. "Admissions at most colleges will be unaffected by Supreme Court ruling on affirmative action." *https://www.brookings.edu/articles/admissions-at-most-colleges-will-be-unaffected-by-supreme-court-ruling-on-affirmative-action/*. Snider, Emily. 2026. "The Impact of the 2023 Students for Fair Admissions v Harvard Decision on Undergraduate Demographics." EdWorkingPaper: 26-1471. Retrieved from Annenberg Institute at Brown University: *https://doi.org/10.26300/98fw-8558*.

dollars are restricted by the donor's intention: scholarship dollars funded by any restricted endowment (restricted by race, ethnicity or any other criterion) represent no more than 16 percent of total scholarship dollars.[8]

Most scholarships and loans offered by private schools are not endowed by a donor with the express intent of restricting eligibility based on race, ethnicity, or national origin. For these scholarships and loans, private schools would have the latitude to revise eligibility criteria to conform to the proposed regulation's definition of racial nondiscrimination. In this case, private schools may use a different mechanism for allocating scholarships and loans to recipients, for example, using geographic or income-based criteria in lieu of a racial or ethnic criterion to determine scholarship eligibility. The shift to using a different mechanism is not expected to result in significant compliance costs and may be the preferred method for maintaining compliance while targeting scholarships and loans to certain students.

2. Changes in recipient population

The proposed regulations may affect the distribution of private school scholarship and loan funds among the population of students. This would result in a change in the composition of the pool of scholarship and loan recipients, but the total value of scholarships and loans awarded, and the number of scholarship and loan recipients, are not expected to change. The degree to which the composition of the pool of scholarship and loan recipients changes may also be limited.

The Treasury Department and the IRS expect that donors may continue to donate to private schools using alternative criteria, such as income, geography, or first-

[8] U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Spring 2025, Finance component, retrieved on February 10, 2026, from *https://nces.ed.gov/ipeds/use-the-data*. This share represents the share of all institutional grants to students which are funded by endowments. Unfunded institutional grants include the amount awarded to students from unrestricted institutional resources. Funded institutional grants include the amounts awarded to students from institutional resources restricted for the purpose of student aid, such as scholarships and fellowships funded by gifts or endowment return restricted for that purpose.

generation student status. The use of these alternative criteria results in a weaker relationship with race and ethnicity and a stronger relationship with other indicators of disadvantage such as income.[9] The Treasury Department and the IRS therefore anticipate that, should donors come to rely on alternative criteria, their gifts would ultimately benefit a population of scholarship recipients whose socioeconomic characteristics are similar to, but do not precisely coincide with, those of the counterfactual set of individuals who would have received scholarships in the absence of the proposed rule.

The Treasury Department and the IRS also expect that almost all private schools, in order to maintain their tax-exempt status, will adjust their scholarship and loan criteria to conform to the regulations if finalized as proposed. To the extent the new criteria used by private schools to distribute scholarships and loans among their students (for example, income and geography) are correlated with race and ethnicity, the change in the recipient population may be limited. The Treasury Department and the IRS do not have readily available parameters and models to more precisely assess the correlation between race and ethnicity and other possible criteria that may be used by private schools to distribute scholarships and loans.

3. Charitable giving behavior of donors

The Treasury Department and the IRS expect that the proposed regulation may affect the charitable giving behavior of donors who wish to provide scholarships or loans where race, ethnicity, or national origin are included in the set of eligibility criteria. These donors may find that eligibility criteria other than race, ethnicity, or national origin, can also be well-suited to promoting educational attainment for certain families. While

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[9] Levine, Phillip, and Sarah Reber. 2023."Can colleges afford class-based affirmative action?" Technical report, The Brookings Institution. *https://www.brookings.edu/articles/can-colleges-afford-class-based-affirmative-action/.* Epple, Dennis, Richard Romano, and Holger Sieg. "Diversity and affirmative action in higher education." Journal of Public Economic Theory 10.4 (2008): 475-501.

the proposed rule does prevent these donors from granting scholarships based on race, ethnicity, or national origin through schools, these donors retain the ability to fund other scholarships. By funding these alternative scholarships, donors may achieve substantially similar outcomes – both for the beneficiaries of their gifts, and with respect to their own tax liability – under the proposed rule as they would have achieved in its absence. As such, the Treasury Department and the IRS expect that the regulation will have a negligible impact on this subset of charitable donors.

II. Paperwork Reduction Act

The proposed regulations do not create new collection requirements, as defined under the Paperwork Reduction Act (44 U.S.C. 35); and do not alter any previously approved OMB information collection requirements and their associated burden.

III. Regulatory Flexibility Act

The Secretary of the Treasury certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that although these proposed regulations may affect as many as 18,000 private elementary, secondary, and post-secondary schools, the proposed regulations would not impose new economically significant requirements on a substantial number of small entities seeking Federal income tax exemption other than legal requirements such entities likely already comply with. The proposed regulations also would not impose a collection of information on any entities (including small entities). The economic effects of the proposed regulations would follow from the administration of scholarship and loan policies by these private schools, with effects on athletics and any other school-supported programs or education policies administered by private schools being insignificant.

Private schools may incur some legal and administrative costs as they endeavor to comply with the regulations if finalized as proposed to the extent of any race-based scholarships that are endowed by a donor, whose letter of intent explicitly stated that eligibility relies on race-based criteria. The income from a scholarship endowment is restricted to fund scholarships, so the impact of eliminating or transferring any such funds on the operating budget and investment assets of the school would be minimal. To the extent that such private schools have preemptively adjusted admissions and scholarship criteria in the wake of the *SFFA* decision, any such effects would be attenuated towards zero.

The Treasury Department and the IRS do not have readily available parameters and models to precisely assess the extent to which affected private schools would pursue shifting criteria, returning funds, or maintaining funds without granting race-based scholarships, or the cost of implementing such changes. However, only a minority of scholarship dollars are restricted by the donor's intention: scholarship dollars funded by any restricted endowment (restricted by race, ethnicity, or any other criterion) represent no more than 16 percent of total scholarship dollars.[10] As such, the Treasury Department and the IRS believe any legal and administrative costs to comply with the regulations (if finalized as proposed) for those private schools with existing endowed race-based funds would not have a significant economic impact on a substantial number of small entities.

Notwithstanding this certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the economic impacts these proposed regulations may have on small entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, these proposed regulations will be

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[10] *See Id*.

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments.

Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the ***Federal Register***.

Effect on Other Documents

If these rules are finalized as proposed, Rev. Proc. 75-50, as modified by Rev. Proc. 2019-22, would be modified by deleting the following sentences which are incompatible with the proposed rules:

1. The second sentence of section 3.02.
2. The third and fourth sentences of section 4.05.

Statement of Availability of IRS Documents

Rev. Rul. 71-447 and Rev. Proc. 75-50 were published in the *Internal Revenue Bulletin* and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal author of these proposed regulations is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Par. 2. Section 1.501(c)(3)-2 is added to read as follows:

§1.501(c)(3)-2 Racial nondiscrimination requirement for private schools.

(a) *In general.* A private school (as defined in paragraph (c) of this section) must be operated exclusively for one or more exempt purposes (as defined in §1.501(c)(3)-1(d)) to be an organization described in section 501(c)(3) of the Internal Revenue Code (Code). A private school that fails to satisfy the nondiscrimination requirement of paragraph (b) of this section is not an organization described in section 501(c)(3) with respect to any taxable year of the private school described in paragraph (d) of this section.

(b) *Nondiscrimination requirement*. A private school is not operated exclusively for exempt purposes if it adopts, maintains, or enforces any policy or practice that discriminates on the basis of race, color, or national or ethnic origin in the administration of any educational policy, admissions policy, scholarship or loan program, athletic program, or other school-administered or school-supported program. For purposes of this section, discrimination on the basis of race, color, or national or ethnic origin includes any discrimination on the basis of race, color, or national or ethnic origin for any purpose.

(c) *Private school defined*. For purposes of this section, the term *private school* means an organization described in section 501(c)(3) (determined without regard to the nondiscrimination requirement of paragraph (b) of this section) and classified as an educational organization described in section 170(b)(1)(A)(ii) of the Code. The term private school does not include a governmental unit, an agency or instrumentality of a governmental unit, or an organization that is owned or operated by an agency or instrumentality of a governmental unit. For purposes of this definition, the term *governmental unit* means the United States, a State, an Indian Tribal government (within the meaning of section 7701(a)(40) of the Code), the District of Columbia, a possession of the United States, or a political subdivision of any of the foregoing.

(d) *Applicability date*. This section applies with respect to the taxable year of any private school beginning after May 31, 2027.

Frank J. Bisignano,

Chief Executive Officer.

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