Tax Insights
from Exempt Organization
Tax Services

Treasury proposes regulations addressing racial nondiscrimination in private schools

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In brief

What happened?

Treasury and the IRS released a Notice of Proposed Rulemaking (REG-119986-25) proposing to add new Reg. 1.501(c)(3)-2. The proposed regulations would disqualify a private school from Section 501(c)(3) tax-exempt status if it adopts, maintains, or enforces a policy or practice that discriminates on the basis of race, color, or national or ethnic origin and would apply to admissions, educational policies, scholarship and loan programs, athletics, and other school-administered or school-supported programs. The proposed regulations would modify Rev. Proc. 75-50 (as previously modified by Rev. Proc. 2019-22) by removing language that permits certain race-based preferences.

The regulations would apply to tax years beginning on or after May 31, 2027. Comments and requests for a public hearing are due on November 3, 2026.

Why is it relevant?

The proposed regulations would affect private educational organizations seeking to qualify or currently recognized as exempt under Section 501(c)(3) and classified as educational organizations under Section 170(b)(1)(A)(ii), including private primary and secondary schools, colleges, universities, professional schools, and trade schools—potentially affecting as many as 18,000 institutions, according to the IRS.

The proposal would codify a uniform public-policy requirement that tax-exempt private schools not discriminate on the basis of race, color, or national or ethnic origin. Treasury ties the proposal to several Supreme Court cases, including *Brown v. Board of Education*, *Bob Jones University v. United States*, and *Students for Fair Admissions v. President and Fellows of Harvard College*. The proposal was listed in the Treasury and IRS Priority Guidance Plan for 2025-2026 and builds on the Trump administration's ongoing scrutiny of race-based and diversity-related programs. Early reactions from Congressional Democratic tax writers, impacted organizations, and other commentators suggest potential legal challenges to the rulemaking.

Actions to consider

Private schools may want to consider the following steps as they evaluate the proposed regulations:

- **Inventory potentially affected policies and programs:** Review admissions, educational policies, scholarships and loan programs, athletics, and affinity or pipeline programs.
- **Review scholarship and loan criteria:** Identify donor-restricted or endowed awards that expressly reference race, color, or national or ethnic origin.
- **Evaluate alternative criteria:** Consider race-neutral factors such as family income, geographic location, first-generation status, individual hardship, military family status, or academic achievement when structuring admissions or financial assistance.
- **Assess documentation and communications:** Review governance records, public-facing statements, application materials, and Form 990-related narratives for consistency with a racial nondiscriminatory policy.
- **Consider whether to comment and prepare for transition:** Evaluate whether to submit comments and develop transition planning before tax years beginning on or after May 31, 2027.

In detail

Background

Section 501(c)(3) describes organizations organized and operated exclusively for charitable or educational purposes, subject to restrictions on private inurement, lobbying, and political campaign intervention. Educational organizations may include schools that maintain a regular faculty, curriculum, and enrolled body of students at the place where educational activities are conducted.

The preamble to the Notice of Proposed Rulemaking traces the development of the federal public policy against racial discrimination in education. It cites *Brown v. Board of Education*, Title VI of the Civil Rights Act of 1964, *Runyon v. McCrary*, *Green v. Connally*, Rev. Rul. 71-447, Rev. Proc. 75-50, *Bob Jones University v. United States*, and *Students for Fair Admissions v. President and Fellows of Harvard College*. It concludes that all forms of racial discrimination in education—regardless of the intent behind such discrimination (for example, discrimination intended for remedial or diversity-related objectives)—conflict with public policy and, therefore, preclude a school's exemption from federal income tax under Section 501(c)(3).

The accompanying press release highlights permissible race-neutral criteria that could be used for financial assistance, including family income, geographic location, first-generation status, individual hardship, military family status, and academic achievement.

Proposed regulatory framework

The proposed regulatory framework would implement three sections:

- Reg. 1.501(c)(3)-2(a) would provide that a private school must be operated exclusively for one or more exempt purposes to be described in Section 501(c)(3). A private school that fails the nondiscrimination requirement would not be an organization described in Section 501(c)(3).
- Reg. 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 or loan program, athletic program, or other school-administered or school-supported program.
- Reg. 1.501(c)(3)-2(c) would define a private school as an organization described in Section 501(c)(3), determined without regard to the proposed nondiscrimination requirement, and classified as an educational organization under Section 170(b)(1)(A)(ii).

The regulations would apply to tax years beginning on or after May 31, 2027.

Effect on Schedule E (Form 990) and Rev. Proc. 75-50

Rev. Proc. 75-50 provides the guidelines and recordkeeping requirements reflected in Schedule E (Form 990) for Schools, and its instructions, are largely drawn from that revenue procedure. If the proposed regulations are finalized, the changes would involve deleting certain sentences from Rev. Proc. 75-50—specifically, the second sentence of section 3.02 and the third and fourth sentences of section 4.05. The remainder of the revenue procedure would remain in effect. Under current guidance, those sentences expressly permit allowing certain race-based preferences in admissions, facilities, programs, scholarships, and financial assistance. As a result, Schedule E (Form 990) and its instructions would require revisions to reflect the new nondiscrimination framework.

Religious mission and anti-discrimination programs

The proposed regulations would not preclude a private school from maintaining a religious mission, curriculum, or program of observance, or from selecting students based on genuine religious affiliation or membership. The proposal also would permit schools to pursue efforts to eliminate prejudice and expand educational opportunity, provided they use race-neutral means rather than classifications based on race, color, or national or ethnic origin.

Potential compliance implications

The IRS estimates that the proposed regulations could affect as many as 18,000 tax-exempt private primary and secondary schools, colleges, universities, professional schools, and trade schools.

Observation: The proposal is not limited to admissions. Its most immediate practical effects could arise in scholarship and loan programs, restricted gifts, athletics, affinity or pipeline programs, and other school-supported initiatives that use race, color, or national or ethnic origin as a criterion.

The takeaway

The proposed regulations continue the Treasury and IRS Priority Guidance Plan for 2025-2026 and reflect ongoing scrutiny of race-based and diversity-related programs. The rule would extend beyond admissions to educational policies, scholarships and loans, athletics, and every other school-administered or school-supported program, while preserving genuine religious admissions criteria and race-neutral efforts to expand educational opportunity.

Private schools should consider a near-term review of policies, application processes, donor-restricted scholarships, athletics, other school-supported programs, governance documentation, and public communications. Organizations also may consider submitting comments and begin transition planning for tax years beginning on or after May 31, 2027.

Let’s talk

For a deeper discussion of how these developments may affect your organization, please reach out to your PwC engagement team or a member of our Exempt Organization Tax Services practice:

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