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Treasury Proposes New Racial (and Other) Nondiscrimination Requirements for Private Schools

On September 4, 2026, the U.S. Department of the Treasury published proposed **regulations** that would significantly change the rules that tax-exempt private schools have to follow in order to qualify for and maintain exemption. The proposed regulations could significantly affect schools that use race, color, or national or ethnic origin as criteria in admissions, scholarships, and other school-related programs, even with respect to long-standing programs or programs subject to donor-imposed restrictions on the use of funds.

What Would the Proposed Regulations Change?

The proposed regulations would add Treasury Regulation Section 1.501(c)(3)-2, providing that private schools would not qualify for Section 501(c)(3) tax-exempt status 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 school-supported program . . . for any purpose." As drafted, the proposed regulations would apparently prohibit all such programs, including those designed and intended to remedy historical discrimination or to promote racial diversity as a pedagogical tool for the benefit of all students. This represents a significant change from longstanding IRS guidance that expressly permitted certain preferences benefiting racial minority groups when designed to further a school's nondiscriminatory policies or to remediate a history of insidious discrimination.

The proposed regulations would apply to private elementary and secondary schools, colleges, universities, and professional and trade schools, but not to public educational institutions. If finalized as proposed, they would apply to taxable years beginning after May 31, 2027.

What Alternatives Would Remain Available?

The proposed regulations would not jeopardize a school's tax-exempt status merely because it adopts programs designed to eliminate prejudice or discrimination, provided those programs do not themselves discriminate based on race, color, or national or ethnic origin.

The nonbinding Preamble to the proposed regulations states that schools and donors to schools may use alternative eligibility criteria, such as financial need, geography, or first-generation student status, although the proposed regulations do not contain such carve outs. The Preamble also provides that the proposed regulations would not preclude a

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private school from maintaining a religious mission or curriculum, or selecting students on the basis of religious affiliation or membership (so long as the selection criteria is based solely on religion and not on shared ancestry or ethnic characteristics). Again, the proposed regulations themselves are silent on the treatment of religious schools.

Opportunity for Public Comment

The proposed regulations are not yet final. Schools, charitable donors, and others interested in or potentially affected by the proposed regulations can submit comments **here**. Treasury is accepting public comments through November 3, 2026, and a public hearing is scheduled for December 2, 2026.

Private schools with existing race-based admissions, scholarship, or other program eligibility criteria should consider reviewing those policies and any associated donor restrictions in anticipation of possible regulatory changes, in case the proposed regulations are adopted.

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