

United States Senate

WASHINGTON, DC 20510

October 19, 2026

The Honorable Scott Bessent
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Frank Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Secretary Bessent and Chief Executive Officer Bisignano:

We write regarding the U.S. Department of the Treasury's (Treasury) proposed rule, which threatens to remove federal tax-exempt status from an estimated 18,000 private K-12 schools, professional or trade schools, colleges, and universities based on the Administration's subjective findings. The proposed rule reinterprets the public policy doctrine and chills lawful actions designed to advance educational opportunity. We urge Treasury to rescind this proposal.

On September 3, 2026, Treasury issued proposed regulations to "end federal tax-exempt status for private schools that engage in racial discrimination, delivering on President Trump's Executive Orders ending discrimination and restoring merit-based opportunity."¹ This is a clear attempt by the Trump Administration to weaponize the tax code and punish educational institutions for political or subjective reasons using a definition of racial discrimination not endorsed by Congress or the Supreme Court. Under the proposed regulations, private K-12 schools, colleges, and universities will no longer be able to maintain policies or practices to support educational opportunities for historically-underserved students in a manner consistent with the *Students for Fair Admission v. Harvard* (SFFA) decision—or risk their tax-exempt status. This attack on our education system will severely limit admissions, scholarships and loans, athletics, and academic assistance programs that students of all backgrounds rely on to access a quality education.

In its proposal, Treasury notes that it plans to rely on the 1983 Supreme Court case *Bob Jones Univ. v. United States*, which upheld the IRS's revocation of tax-exempt status from a pervasively segregationist institution because its racially discriminatory policies violated "fundamental public policy."² In that case, the Supreme Court noted that "there can be no doubt as to the national policy" prohibiting racial segregation because "the position of all three branches of the Federal Government were unmistakably clear."³ As *Bob Jones* makes clear, the IRS must look at the decisions issued by courts, federal statutes, and Congressional intent, not just the administration's subjective interpretations, when applying the public policy doctrine.

Private schools can lawfully advance diversity, equity, inclusion, and accessibility, even under recent Supreme Court precedent. In the SFFA decision, which Treasury references in its proposed

¹ Racial Nondiscrimination in Private Schools, 91 Fed. Reg. 56811 (Sept. 4, 2026).

² *Id.* at 56813, 56815; *Bob Jones Univ. v. United States*, 461 U.S. 574, 594 (1983).

³ *Id.* at 598.

rulemaking, the Supreme Court repeatedly affirmed this point.⁴ For example, the Supreme Court noted universities can continue to employ “race-neutral” policies, such as “focus[ing] on socioeconomic and geographic diversity.”⁵ Further, earlier this year, the Supreme Court reiterated that the government can take action based on race in order to remedy specific instances of past discrimination.⁶

Treasury’s proposed rule, however, indicates that educational institutions are ineligible for tax-exempt status “regardless of the intent behind or the legality [of] racial discrimination (for example, where such discrimination is defended as serving remedial or diversity-related objectives).”⁷ The proposed rule prohibits what Treasury deems “discrimination . . . for any purpose,” including to achieve commendable goals.⁸

This prohibition is particularly concerning since the Trump Administration has repeatedly claimed lawful programs designed to advance diversity, equity, inclusion, and accessibility involve “discrimination.”⁹ Indeed, guidance from the Department of Justice has stated that universities may violate the law even if they use “[f]acially neutral criteria” such as “geographic targeting.”¹⁰ The administration has also repeatedly targeted educational institutions that admit Black and Latino students, often based on little evidence.¹¹

The proposed rule is subjective in its definition of discrimination, and rather than make educational opportunities more equitable, it will threaten academic opportunity and achievement for decades to come. There is substantial evidence that the policies schools and universities employ to create more inclusive learning environments benefit all students and foster critical

⁴ *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 284 (2023) (Thomas, J., concurring) (“Race-neutral policies may thus achieve the same benefits of racial harmony and equality without any of the burdens and strife generated by affirmative action policies.”); *id.* at 317 (Kavanaugh, J., concurring) (“And governments and universities still can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.”) (internal quotation marks omitted); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 526 (1989) (Scalia, J., concurring in judgment) (“A State can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race. . . . Such programs may well have racially disproportionate impact, but they are not based on race.”) (internal quotation marks omitted); *id.* at 509 (plurality opinion of O’Connor, J.) (“[T]he city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”).

⁵ *Students for Fair Admissions*, 600 U.S. at 365.

⁶ *Louisiana v. Callais*, 146 S.Ct. 1131, 1152-53 (2026).

⁷ Racial Nondiscrimination in Private Schools, 91 Fed. Reg. at 56815.

⁸ *Id.*

⁹ *E.g.*, Office for Civil Rights, U.S. Department of Education, Dear Colleague Letter from Acting Assistant Secretary for Civil Rights Craig Trainor (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

¹⁰ Office of the Attorney General, U.S. Department of Justice, Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination from Attorney General Pam Bondi (Jul. 29, 2025), <https://www.justice.gov/ag/media/1409486/dl> at 5.

¹¹ *See, e.g.*, Letter from the Legal Defense Fund to President Maurie McInnis (Aug. 24, 2026), <https://www.naacpldf.org/wp-content/uploads/LDF-Letter-to-Yale-RE-Potential-DOJ-Settlement-FINAL.pdf>; Brianna Atkinson, *As Duke Reviews Federal Discrimination Claims, Some Worry the University Might Overcomply*, WUNC News (Aug. 7, 2026), <https://www.wunc.org/education/2026-08-07/duke-doj-discrimination-claims>.

thinking, empathy, and student achievement.¹² Notably, the Trump administration's prior attempts to impose extralegal requirements on recipients have frequently been blocked by the courts.¹³

It is unclear why Treasury believes it has the authority to revoke private schools' or colleges' tax-exempt status based on supposed violations of fundamental public policy when those actions are explicitly permitted by federal courts, including the Supreme Court.

If Treasury only intends to apply existing law, it is unclear why the proposed rule is necessary. The IRS has a three-part test to determine whether an organization's activities are consistent with exemption under section 501(c)(3): (1) whether the purpose of the organization is charitable; (2) whether the activities are not illegal, *contrary to a clearly defined and established public policy*, or in conflict with express statutory restrictions; and (3) whether the activities are in furtherance of the organization's exempt purpose and are reasonably related to the accomplishment of that purpose.¹⁴

IRS also already has established procedures clarifying that Section 501(c)(3) schools cannot racially discriminate. In 1971, the IRS issued Revenue Ruling 71-447, providing that a private school with racially discriminatory policies is not "charitable" within the common law concepts reflected in Section 190 and 501(c)(3).¹⁵ Further, in 1975, the IRS issued Revenue Ruling 75-50, setting guidelines for private schools to prove they operate on a racially nondiscriminatory basis to qualify for tax-exempt status under Section 501(c)(3). Revenue Ruling 75-50 includes exceptions that allow schools to adopt certain policies regarding racial minority groups if the explicit goal was to promote or maintain a racially nondiscriminatory environment.¹⁶ Treasury has never advanced the view that it has the unilateral power to revoke 501(c)(3) status from schools based on its own determination of "public policy" in conflict with views advanced by the Supreme Court and Congress.

¹² Mary E. Kite and Patricia Clark, *The Benefits of Diversity Education*, American Psychological Association (Sept. 8, 2022), <https://www.apa.org/ed/precollege/psychology-teacher-network/introductory-psychology/benefits-of-diversity>.

¹³ See, e.g., *Chicago Women in Trades v. Trump*, 778 F. Supp. 3d 959 (N.D. Ill. 2025) (granting in part plaintiff's motion for preliminary injunction on First Amendment and separation of powers grounds, regarding termination and certification provisions in challenged executive orders); *NAACP v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 53 (D. Md. 2025) (granting plaintiff's motion for preliminary injunction in challenge against Department of Education (ED) February 14, 2025 letter and accompanying documents "directing federally funded educational institutions to cease all . . . unlawful DEI programs"); *San Francisco Unified School District v. AmeriCorps*, 789 F. Supp. 3d 716 (N.D. Cal. 2025) (granting plaintiff's motion for preliminary injunction challenging AmeriCorps directive imposing anti-diversity, equity, and inclusion conditions); *San Francisco A.I.D.S. Found. v. Trump*, 786 F. Supp. 3d 1184 (N.D. Cal. 2025) (granting in part plaintiff's motion for preliminary injunction in challenge to executive orders rolling back diversity, equity, and inclusion initiatives and targeting programs "promoting 'gender ideology'"); *Am. Fed. of Teachers v. U.S. Dep't of Educ.*, No. 1:25-cv-00628, 2025 WL 2374697 (D. Md. Aug. 14, 2025) (granting in part plaintiff's motion for summary judgment in challenge to ED February 2025 letter and accompanying documents); *Nat'l Educ. Assoc. v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 149 (D.N.H. 2025) (granting plaintiff's motion for preliminary injunction as to the same); *Rhode Island Coalition Against Domestic Violence et al. v. Kennedy, Jr. et al.*, 812 F. Supp. 3d 180 (D.R.I. 2025) (granting plaintiff's motion for preliminary injunction in challenge to new funding conditions imposed by the Department of Housing and Urban Development pursuant to executive orders).

¹⁴ Rev. Rul. 80-278; 1980-2 C.B. 175.

¹⁵ Rev. Rul. 71-447; 1971-2 C.B. 230.

¹⁶ Rev. Proc. 75-50, 1975-2 C.B. 587.

Finally, the context around Treasury’s proposed rulemaking raises serious legal concerns regarding the politicization of IRS enforcement. Prior to the proposed rule’s release, President Trump repeatedly and publicly threatened to revoke the tax-exempt status of specific private universities he dislikes.¹⁷ Furthermore, in April 2025, his administration reportedly directed then-IRS Acting Chief Counsel De Mello to revoke Harvard University’s tax-exempt status.¹⁸ In recent years, the politicization of the IRS has raised bipartisan concern.¹⁹ This dramatic expansion of the public policy doctrine risks further undermining the IRS’s mission of nonpartisan tax administration and enforcement and, to the extent it responds to the President’s requests to audit specific institutions, may violate federal law.²⁰

In light of these significant concerns, we urge the Treasury to rescind this proposal. Furthermore, we also ask Treasury to respond to the following questions by November 20, 2026:

1. The IRS listed its authority for creation of the Proposed Rule as 26 U.S.C. § 7805(a). This is the Secretary of the Treasury’s general rulemaking authority. No other authority was cited. Do you believe this authority is sufficient to promulgate a rule to deny tax exemptions to private schools absent specific congressional authorization?
2. The Supreme Court reiterated again this year that the government can take action based on race in order to remedy specific instances of past discrimination. However, the proposed rule indicates that educational institutions are ineligible for tax-exempt status “regardless of the intent behind or the legality of [racial] discrimination (for example, where such discrimination is defended as serving remedial . . . objectives).” How can all remedial actions violate fundamental public policy if they are explicitly permitted by the Supreme Court?
3. In upholding the IRS’ decision to revoke Bob Jones University’s tax-exempt status for policies excluding Black students, the Supreme Court noted “there can be no doubt as to the national policy” prohibiting these policies because “the position of all three branches of the Federal Government was unmistakably clear.” Do you agree the IRS must look at the decisions issued by courts, federal statutes, and Congressional intent when determining what activities are “discrimination”? How is the IRS determining Congressional intent in this instance?
4. What expertise do IRS personnel possess to make determinations of unlawful discrimination?
5. The preamble to the Proposed Rule states that the IRS “expects” donors may continue making gifts to universities to benefit first-generation college students, as well as

¹⁷ Donald Trump (@realDonaldTrump), Truth Social (Apr. 15, 2025, at 10:09 AM), <https://truthsocial.com/@realDonaldTrump/posts/114342374504628520>; Rebecca Shabad, *Trump Says He Will Revoke Harvard’s Tax-Exempt Status*, NBC News (May 2, 2025), <https://www.nbcnews.com/politics/donald-trump/trump-says-will-revoke-harvard-universitys-tax-exempt-status-rcna204398>.

¹⁸ Jacob Bogage and Jeff Stein, *Trump Administration Asks IRS to Revoke Harvard’s Tax-Exempt Status*, Washington Post (Apr. 16, 2025), <https://www.washingtonpost.com/business/2025/04/16/trump-harvard-tax-exempt-irs>.

¹⁹ *E.g.*, Timeline of the IRS’s Abuse of Conservatives, U.S. House Committee on Ways & Means (Jun. 24, 2014), <https://waysandmeans.house.gov/2014/06/24/timeline-of-the-irss-abuse-of-conservatives>.

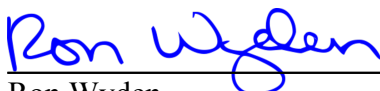
²⁰ 26 U.S.C. 7217.

- low-income and geographically diverse students. Will you advise the IRS that these gifts do not constitute unlawful discrimination? Will you affirm that such gifts will not risk a school's § 501(c)(3) exemption?
6. How would the IRS ensure that any procedure is grounded in the Internal Revenue Code and applicable civil rights law, applied consistently across institutions, and does not improperly penalize organizations for lawful efforts to advance racial equity or equal educational opportunity?
 7. Currently, numerous scholarship programs exist to provide financial assistance to people of Irish, Greek, or other European descent. Would these scholarships violate the proposed rule?
 8. Why did Treasury schedule a telephonic hearing, rather than an in-person hearing, on a topic of this importance?
 9. Do you commit to being forthright, cooperative, and transparent to this Committee as we exercise oversight over the IRS to ensure there is no political interference in tax administration?

Sincerely,



Raphael Warnock
United States Senator



Ron Wyden
United States Senator
Ranking Member, Committee
on Finance



Bernard Sanders
United States Senator
Ranking Member, Committee
on Health, Education, Labor,
and Pensions



Sheldon Whitehouse
United States Senator



Charles E. Schumer
United States Senator