

Exempt Status to End for Private Schools Engaged in Racial Discrimination

Cross References

- IR-2026-103
- REG-119986-25

The Department of the Treasury and the Internal Revenue Service (IRS) have 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.

"Under President Trump, this Administration is standing up for America's students by ensuring racial discrimination has no place in American education," said Treasury Secretary Scott Bessent. "Schools rebranding race-based preferences as equitable, inclusive, or diversity-enhancing does not change their discriminatory nature. Today's Treasury and IRS proposed regulations establish a clear standard, and the institutions that continue to use discriminatory practices will no longer receive the benefits of federal tax-exempt status."

"Private educational institutions that promote discriminatory practices will no longer be afforded the benefits of federal tax-exempt status," said IRS Chief Executive Officer Frank J. Bisignano. "Today's proposed regulations put institutions on notice and schools that continue to engage in racial discrimination should expect to lose that status."

Background. Federal law provides tax-exempt status to organizations that operate exclusively for charitable and educational purposes. For decades, the Supreme Court has recognized that eligibility for tax-exempt status is conditioned on compliance with fundamental public policy, including the prohibition against racial discrimination.

The proposed regulations update Treasury and IRS guidance to reflect that longstanding principle, as established in *Brown v. Board of Education*, *Bob Jones University v. United States*, and *Students for Fair Admissions v. Harvard*, and provide greater clarity for private educational institutions regarding the nondiscrimination requirements associated with federal tax-exempt status.

Proposed regulations. Under the proposed rule, a private school would not qualify for federal tax-exempt status under IRC section 501(c)(3) if it adopts, maintains, or enforces a policy or practice that discriminates on the basis of race, color, or national or ethnic origin. The rule would apply across admissions, educational policies, scholarships and loans, athletics, and every other school-administered or school-supported program.

The proposed regulations would apply to tax-exempt private primary and secondary schools, colleges, universities, professional schools, and trade schools. Treasury and

the IRS estimate that the proposal may affect as many as 18,000 private educational institutions.

The proposal would also eliminate outdated provisions of IRS guidance that permitted schools to favor certain racial preferences in admissions, facilities, programs, scholarships, and financial assistance.

Treasury and the IRS have concluded that these provisions are inconsistent with a uniform nondiscrimination standard and are incompatible with the Supreme Court's case law.

The proposal would not prevent a private school from maintaining a religious mission, curriculum, or program of religious observance. Religious schools may continue to select students based on genuine religious affiliation or membership to remain consistent with existing federal law.

The proposal allows schools to continue expanding educational opportunities to assist disadvantaged students using race-neutral criteria such as family income, geographic location, first-generation status, individual hardship, military family status, or academic achievement when awarding admission or financial assistance. However, schools may not make decisions or confer benefits on the basis of race, color, or national or ethnic origin.

The final regulations would apply to taxable years beginning on or after May 31, 2027, providing affected institutions with sufficient time to review and update their policies to bring admissions, scholarship, and other policies into compliance.

Author's Comment

The President's executive order and these proposed regulations are aimed primarily at eliminating affirmative action, which was a set of governmental policies and practices designed to improve employment, education, and contracting opportunities for groups that were historically underrepresented or discriminated against.

The goal of affirmative action was to counteract systemic discrimination, address historical disadvantages, and promote equal opportunity. Affirmative action policies typically covered race, ethnicity, gender, disability status, veteran status, and religion.

The term affirmative action was first used by President John F. Kennedy in 1961 via an executive order for federal contractors. President Lyndon B. Johnson expanded these efforts in the 1960s with the Civil Rights Act of 1964 and an executive order to tackle racial and gender inequality.

Over the decades, the U.S. Supreme Court placed limits on affirmative action programs, banning rigid racial quotas in 1978. In 2023, the U.S. Supreme Court ruled that race-conscious admissions programs at universities violate the 14th Amendment's Equal Protection Clause.