United States Conference of Catholic Bishops

THE CATHOLIC UNIVERSITY OF AMERICA

ASSOCIATION OF CATHOLIC COLLEGES AND UNIVERSITIES

November 2, 2026

Submitted via Regulations.gov
U.S. Department of the Treasury
Internal Revenue Service ("IRS"), Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comment on Notice of Proposed Rulemaking, *Racial Nondiscrimination in Private Schools,* 91 Fed. Reg. 56811, (Sept. 4, 2026), RIN 1545-BS05, REG-119986-25

To the Treasury Department and the IRS:

The United States Conference of Catholic Bishops ("USCCB"), together with Catholic University of America ("CUA") and the Association of Catholic Colleges and Universities ("ACCU"), submit these comments on the IRS Notice of Proposed Rulemaking issued on September 4, 2026, referenced above. We unequivocally reject invidious racial and ethnic discrimination. The proposed rule, however, extends beyond that settled concern. It would authorize the denial or revocation of tax-exempt status under a broad and insufficiently defined conception of discrimination that could encompass religiously motivated programs addressing ethnoreligious identity and community needs. Although the preamble offers limited assurances concerning religious schools, the proposed regulatory text contains no corresponding protection and neither the text nor the preamble addresses the Religious Freedom Restoration Act ("RFRA"), the First Amendment, or other federal protections for religious liberty. The final rule, if validly adopted, should address the government's legitimate interest in prohibiting invidious discrimination without interfering with the ability of religious schools to carry out their religious missions.

Specifically, we request that Treasury and the IRS:

1. Put the religious-liberty protection in the regulation, not the preamble, and remove the word "solely" from the test for religious selection criteria.

2. Address the RFRA, the First Amendment, and other federal legal protections in the rule and its preamble, as well as add a specific accommodation procedure for religious schools.

3. Direct IRS personnel not to second-guess a religious school's religious doctrine, mission, or closely related internal management decisions, consistent with the First Amendment's

church-autonomy doctrine and the longstanding approach used for Title IX's religious exemption.

4. Limit the rule to invidious discrimination and make explicit that sincerely religious curricular and other decisions by religious schools furthering their religious mission do not violate a fundamental public policy.

5. Provide missing analysis and a transition rule that accounts reasonably for the burden on religious schools and ensures no adverse action will be taken without notice and a reasonable cure period.

USCCB, CUA, and ACCU's Interest in the Proposed Rule

The USCCB is a nonprofit corporation, the members of which are the active Catholic Bishops in the United States who lead the Roman Catholic Church throughout the country.

The USCCB's interest in the proposed rule is informed by two motivations. First, the USCCB is motivated by Catholic teaching that condemns invidious racism, and accordingly, it supports the overarching aims of the proposed rule to ensure federal benefits do not countenance invidious racism. *See* Catechism of the Catholic Church, nos. 1935, 1938; "Open Wide Our Hearts: The Enduring Call to Love - A Pastoral Letter Against Racism," U.S. Conference of Catholic Bishops (2018), available at https://www.usccb.org/resources/open-wide-our-hearts-enduring-call-love-pastoral-letter-against-racism. But second, the USCCB seeks to protect the religiously motivated work of many Catholic schools whose support for marginalized communities could be misconstrued and jeopardized by the proposed rule's current language.

CUA was papally charted by Pope Leo XIII and founded by the bishops of the United States in 1887 and is committed to being a comprehensive Catholic and American institution of higher education, faithful to the teachings of Jesus Christ as handed on by the Church.

ACCU was founded in 1899 and serves as the collective voice of Catholic higher education with the aim to strengthen and promote the Catholic identity and missions of their member institutions.

Specifically, USCCB, CUA, and ACCU's members have together more than 6,000 private and religious schools in dioceses across all 50 states and the District of Columbia, as well as schools operating independently and under religious orders. These include both schools attached to church parishes and those independent schools that look to the dioceses for oversight of their Catholic character, in addition to more than 200 Catholic colleges and universities. Regardless of their origins, these institutions carry out through culture and practices, the faith that recognizes that each child is formed in the image and likeness of a loving God. As part of that practice, the Church has served children from poor, marginalized, immigrant, and isolated communities based on its mandate to help each child reach his or her God-given potential. While these schools are all § 501(c)(3) organizations, they may vary as to specific public charity classification. What does not vary is: evangelization and catechesis as the mission of the Catholic Church, an

ecclesiastical mission for which the Church uses different religious means. The Church establishes its own schools because she considers them a privileged means to fulfill said mission.

As one example, the Black and Indian Mission Office ("BIMO") awards grants to dioceses, schools, and religious education programs to support the evangelization of African American, Native American, and Alaska Native communities. Bishop Chaput, who serves on the Board of BIMO and the USCCB Subcommittee on Native American Affairs, notes that it is the "task of the Church to be the presence of Jesus Christ to Native peoples, providing support, solace, encouragement, and the Gospel of salvation." *See* Our Mission, Black and Indian Mission Office, https://blackandindianmission.org/aboutus. By supporting schools and education programs for these communities, BIMO engages with the Gospel message. As Pope Leo XIV recently emphasized, the underserved "are not the only the objects of our compassion, but teachers of the Gospel." *See Apostolic Exhortation Dilexi te of the Holy Father Leo XIV on Love for the Poor*, 4 October 2025.

Many other examples among Catholic religious communities follow this mission. Extremely relevant in this context are the Sisters of the Blessed Sacrament, a religious order founded by Saint Katharine Drexel in 1891, whose mission, as presented by them on their website, has been entrusted by Christ "to prayer and service among the Black and Native American people" (Sisters of the Blessed Sacrament - Sisters Of The Blessed Sacrament). Since their first boarding school for black children erected in 1892, they have founded hundreds of educational institutions in the United States with the primary objective to serve African American and Native American communities through elementary, high, and superior education. One notable example derives from a Louisiana high school founded in 1915 by Saint Katharine Drexel. With the addition of career fields and additional educational opportunities in the ten years that followed, the high school transformed into Xavier University of Louisiana ("XULA"), established in 1925, and now one of the top ranked Historically Black Colleges and Universities.

Overview of the Proposed Rule

The 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 any educational policy, admissions policy, scholarship or loan program, athletic program, or other school-administered or school-supported program. The paragraph adds that this includes discrimination "for any purpose." The preamble explains that the rule reaches discrimination "regardless of the intent behind" it and would delete the minority-favoring safe harbors in sections 3.02 and 4.05 of Rev. Proc. 75-50.

Scope of the Private School Definition

The definition of "private school" in proposed paragraph (c) covers every § 501(c)(3) organization classified under § 170(b)(1)(A)(ii) other than governmental units. It does not depend on receipt of federal financial assistance. Treasury and the IRS estimate that about 18,000 schools are affected, and the rule would apply to taxable years beginning after May 31, 2027.

In the Catholic tradition, religious education is 'intimately bound up with the whole of the Church's life,' including evangelism and catechism. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 754 (2020) (quoting Catechism of the Catholic Church 8 (1994)). As such, a significant number of Catholic schools are affiliated with and operated as a ministry of a church parish and are classified under § 170(b)(1)(A)(i) as an activity carried out by a church. The definition does not address this and would create disparate treatment among Catholic schools based on this distinction. The rule thus imposes a discriminatory burden along theological lines, restricting the religious exercise of some Catholic schools while leaving identical religious exercise at other Catholic schools untouched solely because of their form of religious governance. That violates the First Amendment. *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238 (2025); *see also id.* at 267 (Thomas, J., concurring) (explaining that it further "violate[s] the church autonomy doctrine" for a state actor to "fail[] to defer to the Bishop of Superior's religious view that Catholic Charities and its sub entities are an arm of the Diocese"); *see also Our Lady*, 591 U.S. at 746 ("The independence of religious institutions in matters of 'faith and doctrine' is closely linked to independence in … 'matters of church government'") (cleaned up).

Absence of Definitive Religious School Protections

Additionally, the regulatory text contains no reference to religion. The only protection for religious schools is one preamble passage stating, "for the avoidance of any doubt," that the rule would not bar a school from maintaining a religious mission, curriculum, or program of observance, or from selecting students by religious affiliation or membership. That passage adds that a religious criterion is not ethnic discrimination merely because members of a religious community share ancestry, "so long as" the criterion rests solely on religion. The members of our institutions rely on that assurance in planning their schools' programs and we ask that it be made enforceable and complete. At the same time, because church autonomy extends beyond a religious school's hiring or admissions, we request that the "avoidance of doubt" proviso be clarified to conform with the church autonomy doctrine — meaning the proviso would protect a religious school's fundraising, outreach activities, school campus programs, and all other "internal management decisions that are essential to the institution's central mission," *Our Lady*, 591 U.S. at 746.

Failing to consider federal religious liberty protections "would certainly [make the agency] susceptible to claims that the rules were arbitrary and capricious for failing to consider an important aspect of the problem." *Little Sisters of the Poor v. Pennsylvania*, 591 U.S. 657, 682 (2020); *cf. Mayo Found. For Med. Educ. & Research v. United States*, 562 U.S. 44, 55 (2011) (stating "we are not inclined to carve out an approach to administrative review good for tax law only"). As such, incorporating and addressing all applicable religious liberty protections into the text of the rule itself is necessary for the agency to fulfill the requirement "[i]n formatting rules, regulations and policies" to "proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens." *Federal Law Protections for Religious Liberty*, 82 Fed. Reg. 49,668, 49,671 (Oct. 26, 2017).

We understand that the IRS will not simply disregard the preamble in its administration of the rule and will presumably create internal procedures to ensure it is incorporated in its guidance.

Nonetheless, a future administration may neither remember nor agree with the language in the preamble. Confining it only to that section means those religious protections would be more easily undone.

First Amendment Prohibition on Inquiry into Religious Exercise

We also raise that the condition of protection for religious criterion being limited to "solely" religion overlooks that membership in some church communities is tied to particular immigrant or ethnic origins, where religion and heritage cannot be neatly separated. A paramount example is XULA and all schools founded by the Sisters of the Blessed Sacrament, which have attended in the fulfilment of their religious missions to specific communities for more than a hundred years. By basing the rule's protection on criteria being "solely" religious the IRS would be forced to inquire into and decide how a religious community understands its own membership and polity. And it would invite endless, intrusive, and debilitating case-by-case inquiries into a religious school's intent, making it impossible to protect the school from government intrusion and allowing future administrations or government officials to engage in selective enforcement of the law. However, it is well established that civil authorities lack the competence to decide religious questions or matters of religious governance such as these, which are "more or less intimately connected [to] religious reviews and ecclesiastical government." *Watson v. Jones,* 80 U.S. 679, 726 (1871); *see also Thomas v. Review Board*, 450 U.S. 707, 714–16 (1981) (courts may not question the correctness or plausibility of religious belief); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708–09 (1976) (civil courts may not resolve matters of internal religious governance); *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020) (religious institutions have autonomy over internal decisions essential to their mission). Indeed, the Supreme Court has already held that it "would also raise serious concerns about state entanglement with religion and denominational discrimination" if "[a]ny attempt" were made by regulatory bodies to distinguish between a religious school's religious identity and its religious uses "by scrutinizing whether and how a religious school pursues its educational mission." *Carson v. Makin*, 596 U.S. 767, 787 (2022).

In *Our Lady of Guadalupe*, the Court explained that the education and formation of students is the reason most private religious schools exist, and that judicial review of how a school carries out that work would undermine the independence of religious institutions in a way the First Amendment does not tolerate. The Court has also recognized that tax exemption for religious institutions reduces, rather than increases, government entanglement with religion. *Walz v. Tax Commission*, 397 U.S. 664, 674–76 (1970). At the higher education level, it has been argued that a religious university's decision about how to form its students is protected by the First Amendment's guarantee of religious freedom. As there, mission matters for all levels of private schools in the Church and the manner of accomplishing that mission is one for the Church to examine and not the government.

The rule as proposed would require the IRS, school by school, to "scrutiniz[e] whether and how a religious school pursues its educational mission." *Carson*, 596 U.S. at 787. That inquiry necessarily involves "differentiating between religions based on theological choices," which all nine justices unanimously rejected to do in the tax exemption context. *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238, 250 (2025).

And, regardless of "the conclusions" reached, the "very process of inquiry leading to findings and conclusions" would itself violate "rights guaranteed by the Religion Clauses." *NLRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979).

Indeed, for such reasons, the federal government's administration of Title IX has long prevented entangling inquiries into religious belief or motivation. For over 40 years, it has been the Department of Education's uniform position that the Department's application of the Title IX exemption must avoid entanglement in internal religious matters or resolution of religious questions. *See* Memorandum: Policy Guidance for Resolving Religious Exemption Requests from Harry M. Singleton, Assistant Sec'y, DOE-OCR, to Reg'l Dirs., Regions I–X, DOE-OCR (Feb. 19, 1985), available at https://www2.ed.gov/about/offices/list/ocr/docs/singleton-memo 19850219.pdf (warning against OCR enforcement actions that could be "obtrusive" into internal religious affairs, and that "[u]nder no circumstances should OCR appear to be interpreting" religious scriptures); *see also* Memorandum: Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions from William L. Smith, Acting Assistant Sec'y, DOE-OCR, to OCR Senior Staff at 3 (Oct. 11, 1989), available at https://www2.ed.gov/about/offices/list/ocr/docs/smith-memo 19891011.pdf ("Smith Memo") (OCR officials "should avoid any appearance of interpreting religious tenets," which could "create potential conflicts under the First Amendment."). That has remained consistent through recent Department regulations, which have broadly exempted religious schools from applications of Title IX that would "not be consistent with its religious tenets." 34 C.F.R. § 106.12; *accord*, *e.g.*, 85 Fed. Reg. 59,953 (Sept. 23, 2020).

In light of this history, we request that Treasury adopt proposed regulatory text that deletes "solely." Further, and consistent with our explanation below, we also request Treasury adopt a clear, religious exemption sufficiently capacious to protect the religious mission of the Catholic Church and its schools.

Effects on Religious Identity and Mission-Based Programs

Under Rev. Proc. 75-50, "race" is already treated as including national or ethnic origin. What is new here is the combination of that term with the phrase "for any purpose," the deletion of the safe harbors, and application to "any" school-supported program. For religious schools, this has three consequences that must be addressed.

(1) Ethno-religious communities

Many religious schools serve communities defined by faith and heritage together. Race has also been read to cover ethnic and ancestral characteristics, which are historical elements that have bound churches in various communities together. And there is conflicting guidance, across multiple agencies of the government, as to whether geographical location may or may not be a proxy for discrimination. This is particularly problematic for Catholic schools since a majority of them admit students based on the co-extensive boundaries of the parish churches they serve. If all trait-conscious assistance could be conflated with discrimination, these non-discriminating churches and their schools may be subject to repeated, resource-intensive inquiries to attempt to prove they are not discriminating. Of course, no Catholic schools to our knowledge use race or

ethnicity for admissions. But where schools draw from homogenous geographic communities, the proposed rule could subject them to charges of discrimination based on the composition of the student body. More concerning is that the breadth of this new rule makes the line between a religious criterion and an ethnic one the IRS's to draw and usurps the role of the Church in determining how best to serve its communities.

(2) Programs open to all students

The rule sweepingly applies to any "school-administered or school-supported program." It does not make clear whether a program that is open to every student, but designed around the experience of particular students, constitutes discrimination. Religious schools have long run programs of student support that take students' backgrounds into account as part of their formation of students. At a minimum, Treasury and the IRS should state that programs open to all students are not discrimination merely because they are designed with specific students' needs and experiences in mind, particularly when motivated by religious belief.

(3) *Departure from existing IRS practice*

The IRS has approved ancestry- and ethnicity-based scholarship and training programs of exempt organizations in revenue rulings and private letter rulings. These permitted programs are not affected by the proposed rule. The preamble does not say whether those positions survive or explain why religious schools are to be treated differently, which raises general applicability problems under the Free Exercise Clause. That is because "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (emphasis in original). Furthermore, if organizations making grants for scholarships and training based on race, ancestry, or ethnicity continue to be exempt, they necessarily touch the activities of schools admitting students who benefit from those programs. The proposed rule provides no guidance on whether a school's administration of those scholarships, or even merely accepting a student benefiting from such scholarships, constitutes "support" of the school sufficient to jeopardize its exemption.

Religious Freedom Restoration Act

In addition to the church autonomy and Free Exercise Clause problems identified above, the rule raises serious problems under the Religious Freedom Restoration Act ("RFRA"). The RFRA forbids the federal government from substantially burdening a person's exercise of religion, even through a rule of general applicability, unless the burden furthers a compelling governmental interest and is the least restrictive means of doing so. 42 U.S.C. § 2000bb-1(a)–(b). RFRA applies to all federal law and its implementation, "whether statutory or otherwise," unless a law expressly excludes it. *Id*. § 2000bb-3(a). It also governs agency regulations. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

The notice of proposed rulemaking does not mention RFRA, the First Amendment, or other applicable religious liberty protections. A rule that conditions tax exemption on abandoning a religious school's mission-based practices, and that expects "almost all" schools to comply to

keep their exemption, should state whether it burdens religious exercise and, if so, why that burden is justified.

It is true that in *Bob Jones University v. United States* the Court held that the government's interest in eradicating racial discrimination in education outweighed the burden imposed by denying exemption to a school that enforced racially discriminatory admissions standards on the basis of religious doctrine. 461 U.S. 574 at 602–04. We agree that the interest in ending invidious racial discrimination in education is compelling in the abstract. But nothing in *Bob Jones* purported to claim that fundamental public policy is violated by religious institutions that have schools and ministries that factor in and specifically seek to serve or educate in matters related to ethno-religious identity. *See Bob Jones University*, 461 U.S. at 596 n.21. Overreading the decision this way would upend not only RFRA, but the church autonomy doctrine — which protects religious schools' authority to preach, teach, and govern themselves according to their doctrines. *See Hosanna-Tabor v. EEOC*, 565 U.S. 171, 196 (2012) ("The First Amendment has struck the balance for us."); *cf. United States v. Fordice*, 505 U.S. 717, 749 (1992) (Thomas, J., concurring) ("It would be ironic, to say the least, if the institutions that sustained blacks during segregation were themselves destroyed in an effort to combat its vestiges.").

Bob Jones University does not authorize the IRS to treat every policy involving race, ethnicity, or national origin as contrary to fundamental public policy. The Court emphasized that determining whether conduct defeats charitable status is a "sensitive" undertaking and that exemption should be denied on public-policy grounds "only where there can be no doubt that the activity involved is contrary to a fundamental public policy." *Bob Jones University* at 598. The policy found sufficiently fundamental there was the national policy against racial discrimination in education, demonstrated by the unmistakably clear and repeated actions of Congress, the Executive, and the courts. *Id.* at 592-99. The practices before the Court denied admission or continued enrollment because of race or racial association; the Court did not hold that every religiously motivated program that takes account of ethnicity, ancestry, or national origin, including a program open to all students, violates fundamental public policy. Indeed, the Court expressly declined to decide whether an organization that otherwise provides a public benefit may lose its exemption merely because some of its activities violate a law or public policy. *Id.* at 596 n.21. The proposal therefore should retain the settled prohibition addressed in *Bob Jones* without extending that decision to religious formation, outreach, or support programs that do not deny admission or generally available educational benefits on a prohibited basis.

The rule goes further than established case law by reaching discrimination "for any purpose," including purposes that are religious, remedial, or mission-based and activities that exclude no one from the school's rights, privileges, and programs. In doing so, it moves from a settled policy against invidious discrimination to a presumed ban on all sincere religious action that considers factors such as national origin and ethnicity as a part of the religious mission of a religious school. Treasury has not shown that such an unprecedented categorical ban is supported by a compelling interest applicable to *all* religious schools. Nor has it shown that there is no alternative other than such a ban. And "so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton v. City of Philadelphia,* 593 U.S. 522, 541 (2021).

The IRS has long approved identity-based programs of secular exempt organizations on a case-by-case basis. If religious schools' mission-based programs are to be treated less favorably than comparable secular programs, strict scrutiny applies. The final rule should explain how it avoids that result.

We ask that the final rule provide a written process, as has been the practice of both this administration and the prior administration, by which a religious school may assert that the application of the rule would substantially burden its exercise of religion, and that no adverse determination issue without a written RFRA analysis approved at the level of the IRS Commissioner or Chief Counsel.

Compliance Burdens and Transitional Relief

The rulemaking record gives short shrift to its analysis that religious schools' interests require little in order to comply with the new rule. Beyond further definition and clarification, we suggest the rule needs a transition period.

The Special Analyses address scholarship dollars based solely on a Government Accountability Office study that is more than thirty years old. During that time, we are aware from the IRS's own reporting that the number of exempt organizations has increased drastically. As recently as 2023, this increase was illustrated for the Congressional Committee on Ways and Means through testimony of a legislative attorney relying on the IRS' own *SOI Tax Stats - Tax-Exempt Organizations and Nonexempt Charitable Trusts - IRS Data Book Tables 2, 3*, 14, and 25. Figure available at https://www.congress.gov/crs-product/TE10090#_Ref153267341 . It is a small step to assume that where exempt organizations may have doubled in number that the proportion of scholarship programs including some considerations barred by the proposed rule have increased as well.

And while the Special Analyses gives passing mention to impact on limited numbers of donors, it says nothing about the burden on religious schools. The Regulatory Flexibility Act certification rests on the premise that affected schools "likely already comply" with applicable legal requirements. That premise does not hold for religious schools that receive no federal financial assistance and whose mission-based programs are currently permitted by the Rev. Proc. 75-50 safe harbors the rule would delete.

The preamble also acknowledges that schools with donor-restricted scholarships may need to work with donors or their heirs. That work often requires state-law reformation proceedings, including changes to trusts and bequests. Religious schools with many small, historic funds will need time to make any needed changes in compliance with state requirements and should not be forced to jeopardize their exemptions in the meantime. We ask for a cure period and an express statement that no adverse action will be based on conduct before the final rule applies.

Text-Specific Recommendations

In addition to the requests at the beginning of this comment that we have expanded upon in the above discussion, we suggest the following specific text recommendations:

1. Replace the last sentence of paragraph (b) ("For purposes of this section, discrimination … for any purpose.") with: "For purposes of this section, a policy or practice discriminates on the basis of race, color, or national or ethnic origin if it denies a student, on that basis, admission to the school or the rights, privileges, programs, and activities generally accorded or made available to students at the school."

2. Add a new paragraph (e), "Religious schools", as follows:

    (1) This section does not prohibit a religious private school from maintaining a religious mission, curriculum, or program of observance, or from selecting students, faculty, or participants on the basis of religious affiliation, membership, belief, or practice. Nor shall this section prohibit any of the religious private school's internal management decisions that are essential to the institution's central mission—including fundraising, outreach, or school activities. A selection criterion based on religion is not discrimination on the basis of race, color, or national or ethnic origin merely because members of the relevant religious community share ancestry or heritage.

    (2) The Internal Revenue Service shall accept a school's sincere statement of its religious beliefs and mission.

    (3) A program open to all students on the same terms is not discrimination for purposes of paragraph (b) because it is designed to support the religious formation or participation of students of particular backgrounds.

    (4) This section must be interpreted and applied consistently with the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb et seq.

    (5) A religious private school may submit a written statement that applying this section would be inconsistent with its religious beliefs and receive a letter confirming its exempt status. Such letter is not required for a religious private school to be exempt. No adverse determination shall be made until the IRS Commissioner or Chief Counsel has issued a written determination addressing that statement.

3. Add a transition rule to paragraph (d): a religious private school shall not be treated as failing paragraph (b) for any taxable year before the date the final rule applies, or until 12 months after written notice of a proposed adverse determination, during which the school may conform its policies, including by seeking reformation of donor-restricted funds under state law.

4. State in the preamble to the final rule whether existing revenue rulings and private letter rulings approving ethnicity- and ancestry-based programs remain valid for religious private schools, and why.

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The revised text would reflect the following changes:

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, a policy or practice discriminates on the basis of race, color, or national or ethnic origin if it denies a student, on that basis, admission to the school or the rights, privileges, programs, and activities generally accorded or made available to students at the school. The mere acceptance, by a school, of assistance or aid from an organization independent of the school does not, by itself, cause a program to be a school-supported program within the meaning of this paragraph. An organization is independent of the school only if it is not controlled by, or operated in connection with, the school.

(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 under 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. A private school shall not be treated as failing paragraph (b) for any taxable year before the date the final rule applies, or until 12 months after written notice of a proposed adverse determination, during which the school may conform its policies, including by seeking reformation of donor-restricted funds under state law.

(e) *Religious schools.*

(1) This section does not prohibit a private school from maintaining a religious mission, curriculum, or program of observance, or from selecting students, faculty, or participants on the basis of religious affiliation, membership, belief, or practice. A selection criterion

based on religion is not discrimination on the basis of race, color, or national or ethnic origin merely because members of the relevant religious community share ancestry or heritage.

(2) The Internal Revenue Service shall not determine whether a school's religious mission, beliefs, or practices are correct or sufficiently religious, and shall accept a school's good-faith, documented statement of its religious mission.

(3) A program open to all students on the same terms is not discrimination for purposes of paragraph (b) because it is designed, in accord with and motivated by its religious mission, to support the formation or participation of students of particular backgrounds.

(4) Nothing in this section limits the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb et seq.

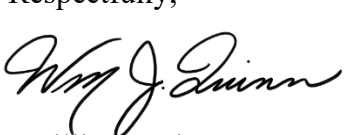
(5) A school may submit a written statement that applying this section would substantially burden its exercise of religion, and no adverse determination shall be made until the IRS Commissioner or Chief Counsel has issued a written determination addressing that statement.

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For these reasons, as we state in this comment, we urge Treasury and the IRS to put religious-liberty protections in the regulation, address the RFRA, the First Amendment, and other federal legal protections, as well as add a specific accommodation procedure for religious schools. We also urge Treasury and the IRS to direct IRS personnel not to second-guess a religious school's religious doctrine, mission, or closely related internal management decisions. Also, Treasury and the IRS should limit the rule to invidious discrimination and make explicit that sincerely religious curricular and other decisions by religious schools furthering their religious mission do not violate a fundamental public policy. Finally, we urge the government to provide missing analysis and a transition rule and to include our text recommendations set above.

Thank you for taking our views into consideration.

Respectfully,



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