Do No Harm

November 3, 2026

Via electronic submission

Internal Revenue Service
CC:PA:01:PR (REG-119986-25)
Room 5503
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Comment on the Proposed Rule, "Racial Nondiscrimination in Private Schools," 91 Fed. Reg. 56811 (Sept. 4, 2026) (REG-119986-25; RIN 1545-BS05) (Docket ID IRS-2026-1189)

Do No Harm is a nonprofit organization with over 50,000 members, including physicians, nurses, medical students, patients, and policymakers. Do No Harm is committed to ensuring that professional and educational opportunities are allocated on the basis of merit rather than race, ethnicity, or some other immutable characteristic. To that end, the organization opposes the spread of race-conscious practices and, when necessary, engages policymakers and the courts to ensure that antidiscrimination laws are enforced as written.

Consistent with that mission, Do No Harm supports the Treasury Department and the Internal Revenue Service's proposed rule, which would codify the longstanding requirement that a private school maintain a racially nondiscriminatory policy to qualify for tax exemption. *See* Racial Nondiscrimination in Private Schools, 91 Fed. Reg. 56811 (Sept. 4, 2026). Do No Harm submits this comment for three reasons. First, to explain why a school's asserted good intentions should not excuse race-based discrimination. Second, to support applying that principle to private schools claiming tax exemption. And third, to recommend that the IRS guard against the use of facially neutral criteria as disguised racial preferences.

1. The Proposed Rule Properly Rejects Racial Preferences, Whatever Their Asserted Justification.

The proposed rule builds on Revenue Ruling 71-447, which the Supreme Court sustained in *Bob Jones University v. United States*.[1] Under proposed §1.501(c)(3)-2(b), a private school is not operated exclusively for tax 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."[2] It further provides that the prohibition reaches discrimination undertaken "for any purpose."[3] A school therefore cannot shield its race-based line-drawing by attempting to characterize it as benign or well-intentioned.

In adopting this standard, the proposed rule properly eliminates the carve-outs in Revenue Procedure 75-50. Section 3.02 currently permits certain preferences for racial minority groups when their purpose and effect are to promote a school's racially nondiscriminatory policy. Section 4.05 likewise permits certain race-based financial assistance programs.[4] The proposal would remove those exceptions.[5] And that change matters. A student denied an educational opportunity because of race suffers the same injury regardless of whether the school calls its discriminatory policy benign or vaguely calls it "remedial." Schools cannot discriminate against students because of race to remedy the effects of general, societal discrimination, beyond "remediating specific, identified instances of past discrimination that violated the Constitution or a statute" in a time-limited and narrowly tailored manner.[6] Federal tax law should not reward that distinction.

Eliminating those carve-outs also brings the IRS's exemption standards into closer alignment with the Supreme Court's decision in *SFFA v. Harvard*. There, the Court held Harvard's and UNC's admissions programs unlawful and explained that "[e]liminating racial discrimination means eliminating all of it."[7] And as the Court recognized decades earlier in *Bob Jones*, racial discrimination in education violates "a most fundamental national public policy."[8] The proposed rule gives that policy practical force: private schools may not receive federal tax benefits while allocating educational opportunities by race.

Of course, the proposed rule interprets the Internal Revenue Code's charitable-purpose requirement, not Title VI or the Equal Protection Clause directly. But under *Bob Jones*, an institution qualifies as "charitable" only if it serves a purpose that is not contrary to established public policy.[9] The Supreme Court's equal-protection decisions help clarify the content of that policy—including the limited circumstances in which race-based remediation is permissible.[10] Thus, *SFFA*'s limits on remedial racial preferences should still inform the standard the IRS applies here.

2. The Rule Properly Applies Nondiscrimination Across Private Schools and Their Programs.

The proposed rule will prevent a private school from preserving racial preferences in its scholarships and other programs even if it removes them from admissions. Its plain text reaches educational policies, scholarship and loan programs, athletics, and any "other school-administered or school-supported program."[11] That coverage is essential. Equal treatment at the admissions office is little comfort to a student excluded by race from the financial assistance needed to attend. The same nondiscrimination principle should govern both opportunities.

Just as significant, the rule's coverage is not confined to schools that accept federal funds. Rather, the proposed rule's condition on tax exemption extends to every private school that seeks exempt status—whether a K-12 school, a college or university, or a professional or trade school. That breadth closes a gap: a school that takes no federal funds, and so lies beyond Title VI, will now be covered if it discriminates on the basis of race.[12] A school should not be able to preserve federal tax benefits for racial discrimination simply because it does not receive federal financial assistance. Do No Harm supports making the nondiscrimination condition explicit across this full field of private schools.

Finally, a substantive standard is only as effective as the means available to detect violations of it. The existing compliance framework, which the proposed rule leaves in place, supplies those means: a private school must publish its racially nondiscriminatory policy, maintain records demonstrating compliance, and attest to its compliance on Schedule E of the Form 990. Do No Harm supports retaining these publication, recordkeeping, and reporting requirements, which are the practical mechanisms that allow the IRS to identify noncompliance.

3. The IRS Should Ensure That Racial Preferences Cannot Be Preserved Through Proxies.

Do No Harm urges the IRS to make clear that a school cannot preserve a racial preference merely by replacing an express racial classification with a proxy. The Supreme Court addressed that danger directly in *SFFA*: universities may not use application essays or other means to recreate the admissions regime the Court held unlawful.[13] A student's experience may be considered for what it reveals about that individual's qualities—not as a device for awarding a preference based on race.[14]

The proposed rule highlights this distinction. The rule anticipates that donors may replace race-based eligibility with income, geography, or first-generation student status.[15] Those alternatives are not inherently discriminatory. But the question is whether the school actually evaluates financial need, educational disadvantage, or individual experience neutrally—or instead uses those labels to continue selecting students by race. The final rule should make that distinction explicit.

The Department of Justice has already identified this problem in the enforcement context. Its guidance for recipients of federal funding regarding unlawful discrimination warns against the use of facially neutral criteria as "unlawful proxies for race."[16] Do No Harm respectfully urges the IRS to take the same approach here: in administering the rule, the Service should ensure that its detection mechanisms flag facially neutral criteria adopted as substitutes for race, so that the rule's protections cannot be evaded through relabeling. Doing so will give full effect to the rule's command that discrimination "for any purpose" be flagged, and it will prevent facially neutral proxies from becoming a loophole.

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Do No Harm commends the Treasury Department and the IRS for a rule that equips the government to flag and eliminate racial discrimination in private education, regardless of the purpose offered to justify it. Do No Harm supports the proposed rule and urges only that the Service, in implementing it, ensure its enforcement mechanisms reach facially neutral proxies for race as well as express racial classifications.

If you have any questions or require further information, please feel free to contact me at stanley@donoharmmedicine.org. Thank you for your attention to this important matter.

Sincerely,



Stanley Goldfarb

BOARD CHAIRMAN

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[1] *Bob Jones University v. United States*, 461 U.S. 574, 592-96, 599 (1983).

[2] *Racial Nondiscrimination in Private Schools*, 91 Fed. Reg. 56811, 56819 (proposed Sept. 4, 2026) (to be codified at 26 C.F.R. §1.501(c)(3)-2) [hereinafter Proposed Rule].

[3] Proposed Rule, *supra* note 2, at 56819; *see also id.* at 56815 (explaining that remedial or diversity-related objectives do not preserve exemption).

[4] Rev. Proc. 75-50, §§3.02, 4.05, 1975-2 C.B. 587, quoted in Proposed Rule, *supra* note 2, at 56813.

[5] Proposed Rule, *supra* note 2, at 56815, 56818.

[6] *SFFA v. Harvard*, 600 U.S. 181, 206, 207 (2023).

[7] *Id.* at 206, 230

[8] *Bob Jones*, 461 U.S. at 593.

[9] *Id.* at 591-92.

[10] *SFFA*, 600 U.S. at 207-08.

[11] Proposed Rule, *supra* note 2, at 56819.

[12] *Id.* at 56815, 56819.

[13] *SFFA*, 600 U.S. at 230.

[14] *Id.* at 230-31.

[15] Proposed Rule, *supra* note 2, at 56817-18.

[16] *See* U.S. Dep't of Justice, Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025).