SCHENCK PRICE

LEGAL ALERT

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*The IRS Proposes Nondiscrimination Rules Impacting Tax-Exempt Private Schools*

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On September 3, 2026, the Department of the Treasury and the Internal Revenue Service announced proposed regulations [REG-119986-25] addressing racial discrimination and tax-exempt status for private schools under Section 501(c)(3) of the Internal Revenue Code. If the proposed regulations are finalized as currently drafted, the proposed regulations could significantly impact private schools.

As set forth in the preamble to the proposed regulations, existing regulations will be updated "to provide that a private school is not described as an organization exempt from Federal income tax if it discriminates on the basis of race, color, or national or ethnic origin in administration of its educational, admissions, scholarship, athletic, or other policies, based on the fundamental public policy of the United States against such practices. These proposed regulations would affect private schools in taxable years beginning after May 31, 2027, which is after the final regulations are expected to be published."

The proposed regulations define private schools to include any primary and secondary school, college, professional, trade school or university. Generally, a governmental unit, an agency or instrumentality of a governmental unit, or an organization operated or owned by such entities, would not be included in the definition.

As further set forth in the preamble of the proposed regulations, referring to recent case law, including *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), racial discrimination would not be permissible regardless of its intent, including "to ameliorate the effects of past racial discrimination."

If the proposed regulations are finalized as drafted, then certain portions of Rev. Proc. 75-50, which provide guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies, would be modified.

Treasury and the IRS estimate that up to 18,000 private schools and 750,000 students may be affected. Comments and requests for a public hearing must be received by November 3, 2026.

**Next steps**: Although the regulations are in proposed form, private schools should begin reviewing and evaluating the potential impact of the proposed regulations now.

**Recommended steps include**:

Inventory and review admissions policies.

Review scholarship, loan and financial aid programs.

Review gift instruments and restricted endowments for race-based eligibility criteria.

For more information, contact Farah N. Ansari, Esq. at FNA@spsk.com or 973-540-7344.

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