Submitted via regulations.gov

November 3, 2026

U.S. Treasury Secretary Scott Bessent
Acting Commissioner
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Racial Nondiscrimination in Private Schools (91 Fed. Reg. 56811; FR Doc. 2026-18127; REG-119986-25; RIN 1545-BS05)

Dear Secretary Bessent,

The American Association of University Women (AAUW) strongly opposes this proposed rule. We urge the Department of the Treasury and the Internal Revenue Service (IRS) to withdraw it. This rule uses the IRS as a weapon to reshape higher education. AAUW joined the comments submitted by the Legal Defense Fund, the American Civil Liberties Union (ACLU), and the Lawyers' Committee for Civil Rights Under Law. We write separately to address what this rule means for women and for students' educational opportunity.

For 145 years, AAUW has worked to open the doors of education to women through research, education, and advocacy. We are the largest non-institutional funder of women's graduate education in the United States. We know what it takes for a student to get to college and finish. Money matters. So does walking onto a campus and knowing you belong there.

Under this rule, a private school or college would lose its federal tax-exempt status if it considers race, color, or national or ethnic origin "for any purpose." That covers admissions, scholarships and loans, athletics, and any other "school-administered or school-supported" program. Tax-exempt status means a school does not pay federal income tax and its donors can deduct their gifts. Treasury estimates that the rule could affect about 18,000 private schools.[i]

I. Protect the programs that give students equal educational opportunity

This rule reaches scholarships, loans, and other programs that help students of color at private schools and colleges. Treasury says the purpose of these programs does not count. The rule would apply "regardless of the intent behind or the legality" of a program, including efforts to address past discrimination or expand diversity.[ii]

We reject that framing. Targeted scholarships help students who have been shut out get in the door. Campus programs help them feel welcome and supported once they arrive, and that helps them stay and finish. Those programs make a college better for all of its students. They are nothing like the policies at issue in *Bob Jones University v. United States*, the 1983 case Treasury relies on. Bob Jones University expelled students for interracial dating and marriage. This rule would treat a school that opens a door the same way it would treat a school that slams one shut.

The stakes are especially high for women of color. According to AAUW's analysis of Census Bureau data, women working full time, year round were paid 84 cents for every dollar paid to men in 2025. Black women were paid 64 cents and Latinas 60 cents compared with non-Hispanic white men. Those gaps reflect concentration in lower-paying jobs, uneven access to hiring and promotion, discrimination in pay decisions, and penalties for caregiving. A graduate degree can help narrow those gaps. AAUW's analysis of Census Bureau Current Population Survey data finds that a master's degree increases earnings by more than 25 percent for Black women and 24 percent for Hispanic and Latina women, compared with just under 10 percent for white women. Even with that degree, Black women earn 63 cents and Hispanic and Latina women 66 cents on the dollar compared with white non-Hispanic men who hold a master's degree. Paying for that degree has become harder. Congress has eliminated Graduate PLUS loans and capped federal borrowing for most graduate students at $100,000. Taking away scholarships now would close another path to a degree. AAUW told the Department of Labor in 2025 that affirmative action rules helped women and people of color enter higher-paying fields such as medicine and STEM. Opportunity grows when institutions are free to open doors.[iii]

II. Do not use tax status to decide whose mission is acceptable

This rule would let the IRS decide which charitable missions are acceptable. That is viewpoint discrimination: punishing organizations for their values instead of their conduct. AAUW raised the same concern in 2025, when the Department of Education proposed deciding which nonprofits had a "substantial illegal purpose" for Public Service Loan Forgiveness. We warned then that eligibility would hinge "on whether the current administration approves of an organization's mission." The same warning applies here, with higher stakes.[iv]

This rule also fits a pattern. The President threatened Harvard's tax-exempt status in 2025. The Department of Education has rewritten the rules for college accreditors, and it has proposed new conditions on federal education grants. AAUW opposed those proposals too. Each one uses money to pressure schools into doing what the law does not require. Treasury Secretary Scott Bessent has now said that rebranding race-based preferences "does not change their discriminatory nature." That tells schools that changing a program's name may not protect them. Federal law bars the IRS from targeting organizations for ideological reasons, and that protection means little if the rule's terms are this open.[v]

The rule covers schools, but the precedent reaches further. AAUW is a 501(c)(3), as are the colleges, foundations, and community groups we work with every day. If the IRS can do this to one kind of mission, it can do it to others. Colleges and charities should answer to the law, not to the preferences of whoever is in power.

III. Leave this decision to Congress and the courts

AAUW is not a legal organization. The joint comments we joined lay out the detailed legal analysis. Our concern is simple. Rules this big should come from Congress and the courts, and this one does not.

Treasury relies on *Bob Jones*. In that case, the Supreme Court said the IRS should declare a school not charitable "only where there can be no doubt" that the activity is contrary to a fundamental public policy. The Court upheld the IRS there because the position of all three branches of government was "unmistakably clear." We do not see that kind of clarity here. The Congressional Research Service notes that the proposal does not identify action by Congress specifically against affirmative action or diversity programs. It also notes that going beyond admissions may not be supported by the proposal's reasoning. The Supreme Court's 2023 decision in *Students for Fair Admissions* was about admissions.[vi]

Schools have also relied on IRS guidance for 50 years. Since 1975, Revenue Procedure 75-50 has said that a policy favoring racial minority groups in admissions, facilities, programs, and financial aid is not discrimination when it is meant to promote a school's nondiscriminatory policy. Treasury would delete that language. Colleges and donors built programs around it. An agency that changes course that sharply owes the public a far better explanation than this proposal gives.[vii]

IV. Tell schools and donors what the rule means

The rule never says what "school-supported" means. It does not say how the IRS would judge a school's practices, how a school would respond, or whether one program could cost an entire university its status. Treasury suggests that schools use income, geography, or first-generation status in place of race. It then says those factors may be correlated with race and ethnicity, and that it lacks models to measure the link. Meanwhile, the Justice Department's July 2025 guidance warned that "geographic targeting" can be unlawful proxy discrimination. Treasury offers geography as a safe alternative, and the Justice Department warns against it. Schools are left to guess. AAUW raised the same problem with the undefined term "proxies" in the Department of Education's grant proposal.[viii]

When the penalty is this severe and the line is this unclear, schools will not wait to find out where it falls. They will cut programs, including legal ones. Scores of universities have already shut down or rebranded diversity offices and ended scholarships and clubs under White House pressure. AAUW warned of this same chilling effect in our 2025 comments. Students pay the price when a program disappears out of fear.[ix]

V. Account for the real costs

Treasury has not shown that it understands who this rule would hurt. Its estimate of 750,000 affected students relies on a Government Accountability Office report from 1994. It offers no dollar estimate of the cost to schools. It certifies that the rule would not have a significant economic impact on a substantial number of small entities, even though it could affect about 18,000 schools. Nowhere does it mention historically Black colleges, tribal colleges, or other minority-serving institutions.[x]

Treasury also says the effect on donors would be "negligible." Marjorie Hass, president of the Council of Independent Colleges, told the Associated Press that the change would most likely affect donations, which are often earmarked for scholarships. Changing the terms of a restricted gift can take donor consent or court approval. Treasury's figure that restricted endowments are no more than 16 percent of scholarship dollars comes from postsecondary data, yet the rule also covers K-12 schools. Schools would have to audit every policy, program, and fund, and many may have to set aid offers for 2027-2028 before the courts weigh in. The National Association of Independent Colleges and Universities warns that the rule "may create new compliance burdens and legal uncertainties." Every dollar spent on lawyers and audits is a dollar that does not go to students. The harm would reach staff too. Losing 501(c)(3) status could cost university employees access to Public Service Loan Forgiveness, a program AAUW has fought to protect.[xi]

Conclusion

AAUW urges Treasury and the IRS to withdraw this proposed rule in its entirety and to keep the guidance schools have relied on for 50 years. Decisions about how to expand opportunity belong to schools, their leaders, and their communities, within the law. Tax officials should not make those decisions.

Scholarships and campus programs give students a real chance to get to college and finish. The federal government should be asking how to help more students do that. This rule punishes the schools that are trying.

We appreciate your consideration of these comments.

Sincerely,



Meghan Kissell
Senior Director, Policy & Member Advocacy

[i] Racial Nondiscrimination in Private Schools, 91 Fed. Reg. 56811, 56816, 56819 (Sept. 4, 2026) (proposed § 1.501(c)(3)-2), https://www.federalregister.gov/d/2026-18127.
[ii] 91 Fed. Reg. at 56815.
[iii] Bob Jones Univ. v. United States, 461 U.S. 574 (1983); AAUW, The Gender Pay Gap, https://www.aauw.org/issues/economic-security/pay-gap/ (AAUW analysis of U.S. Census Bureau table PINC-05, Current Population Survey, Sept. 2026); AAUW, The (Not So) Simple Truth About the Gender Pay Gap: 2026 Update 9–10 (2026), https://www.aauw.org/app/uploads/2026/03/The_Simple_Truth_Gender_Pay_Gap_2026.pdf; AAUW, Nation's Largest Non-Institutional Funder of Women's Graduate Education, Opposes New Federal Loan Rule (May 1, 2026), https://www.aauw.org/resources/news/media/press-releases/nations-largest-non-institutional-funder-of-womens-graduate-education-opposes-new-federal-loan-rule/; Pub. L. No. 119-21 (2025); AAUW, Comment on Docket ID OFCCP-2025-0001 (Sept. 2025), https://www.aauw.org/app/uploads/2025/09/AAUW-Comment-OFCCP-2025-0001.pdf.
[iv] AAUW, Comment on Docket ID ED-2025-OPE-0016 (Sept. 17, 2025), https://www.aauw.org/app/uploads/2025/09/AAUW-comment-on-ED-2025-OPE-0016-Sept-25.pdf.
[v] Collin Binkley, "Trump administration pushes to remove tax exemption for private colleges with DEI policies," Associated Press (Sept. 4, 2026); AAUW, Comments on Accreditation, Innovation, and Modernization, Docket ID ED-2025-OPE-1042 (Sept. 21, 2026), https://www.aauw.org/app/uploads/2026/09/AAUW_Comments-AIM-ED-2025-OPE-1042-0002.pdf; AAUW, Comments on Education Department General Administrative Regulations, Docket ID ED-2026-OPEPD-2542 (Sept. 23, 2026), https://www.aauw.org/app/uploads/2026/09/AAUW-ED-2026-OPEPD-2542-0001.pdf.
[vi] Bob Jones, 461 U.S. at 592, 598; Congressional Research Service, IRS Proposed Regulations on Racial Nondiscrimination in Private Schools, LSB11491 (Oct. 19, 2026), https://www.everycrsreport.com/reports/LSB11491.html; Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023).
[vii] 91 Fed. Reg. at 56813, 56815; Rev. Proc. 75-50, 1975-2 C.B. 587.
[viii] 91 Fed. Reg. at 56817–19; Gibson Dunn, Treasury, IRS Propose Regulations Denying Tax-Exempt Status to Private Schools That Use Race in Admissions, Scholarships, Other Programs (Sept. 2026); Memorandum from Pamela Bondi, Att'y Gen., Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025), https://www.justice.gov/ag/media/1409486/dl; AAUW, Comments on Docket ID ED-2026-OPEPD-2542, supra note v.
[ix] Binkley, supra note v; AAUW, Comment on Docket ID ED-2025-OPE-0016, supra note iv.
[x] 91 Fed. Reg. at 56816–18 & n.5.
[xi] 91 Fed. Reg. at 56817–18 & n.8; Binkley, supra note v; Gibson Dunn, supra note viii; 20 U.S.C. § 1087e(m)(3)(B)(i).