Bond Case Briefs

Municipal Finance Law Since 1971

Mintz: IRS Proposes New Rules for Private Schools with Race-Based Policies

Proposed regulations could jeopardize 501(c)(3) tax-exempt status, charitable deductions, and tax-exempt bond financing for affected institutions.

On September 4, 2026, the Department of the Treasury and the Internal Revenue Service published proposed regulations (REG-119986-25) that would add a new Treas. Reg. § 1.501(c)(3)-2 to the Income Tax Regulations. If finalized as proposed, the rule would remove the tax-exempt status under Section 501(c)(3) of the Internal Revenue Code from any private school that adopts, maintains, or enforces any policy or practice that discriminates on the basis of race, color, or national or ethnic origin — regardless of the purpose of such discrimination, including remedial or diversity-related objectives.

The stakes are significant: noncompliant schools could lose their federal income tax exemption, contributions to them could cease to qualify as deductible charitable contributions under Section 170, and outstanding tax-exempt qualified 501(c)(3) bonds that depend on the 501(c)(3) status of the school conduit borrower would become taxable with the loss of 501(c)(3) status. Treasury and the IRS estimate that approximately 18,000 tax-exempt private schools and 750,000 students potentially eligible for identity-based scholarships may be affected.

Important: This rule is *proposed* only. It has not been finalized and does not change current law. The proposed regulations are subject to public comment and may be revised before finalization. Written or electronic comments and requests for a public hearing are due November 3, 2026 (i.e., 60 days after Federal Register publication).

Continue reading.

By Christie L. Martin, R. Neal Martin, Meghan B. Burke

September 10, 2026

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com