



September 16, 2026

VIA REGULATIONS.GOV

The Honorable Scott Bessent, Secretary
U.S. Department of the Treasury
Internal Revenue Service, Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 204420

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

Dear Secretary Bessent,

Students for Fair Admissions (“SFFA”) submits the following comment on the above-referenced proposed rule regarding racial nondiscrimination in private schools. The proposed rule is critical because it codifies a simple principle: a school that discriminates based on race, color, or national or ethnic origin, in any of its policies or programs, cannot be tax-exempt under section 501(c)(3).

SFFA is particularly well-suited to comment on this proposed rule, because SFFA was the plaintiff in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), on which the proposed rule principally relies. SFFA is a nonprofit membership organization of over 20,000 students, parents, and others who believe that racial classifications and preferences in college admissions are unfair, unnecessary, and illegal. Since the *SFFA v. Harvard* decision, SFFA has devoted much of its work to combatting the problem this comment addresses: educational institutions that have replaced overt racial classifications and preferences with facially neutral instruments designed to produce the same racial results.

SFFA offers this comment to make one particular emphasis for the Department’s consideration: **“Geographic location” and other location-based factors can serve as impermissible race proxies and, when they are, should be deemed just as impermissible as the use of race itself.**

The U.S. Department of the Treasury has stated¹ that the proposed rule allows schools to continue expanding opportunities for disadvantaged students through race-neutral criteria such as:

- Family income
- Geographic location
- First-generation status
- Individual hardship
- Military family status
- Academic achievement

SFFA agrees with those factors if decisions are not made on the basis of race, color, or national or ethnic origin. However, one item on that list—“geographic location”—is not like the others. SFFA’s experience since the *SFFA v. Harvard* decision compels it to urge the Treasury Department and the IRS to consider the implications of listing that factor as a permissible consideration, without sufficient warnings against the potential misuse of that factor to further race discrimination.

Geographic location is inherently vulnerable to manipulation. A student’s home address, for example, can point to a census tract, a neighborhood, a civic association, and a high school in a country where residential patterns remain correlated with race. An applicant’s address is frequently the single most predictive “race-neutral” variable available to an admissions office. That is precisely why address-based tools became a concerning method of continuing racial preferences after the SFFA ruling in 2023.

The clearest example was the College Board’s “Landscape” instrument. Landscape began as an “adversity score,” furnishing admissions offices with a numerical assessment of each applicant’s neighborhood and high school, built from variables such as median family income, housing values, single-parent households, educational attainment, and exposure to crime. The variables were not chosen at random. They were selected because, in combination, they track closely with race without specifically identifying it. Many institutions acknowledged that the tool was useful because it helped increase nonwhite enrollment.²

After SFFA’s scrutiny of the tool,³ the College Board discontinued Landscape in 2025, with little public explanation. This action was telling: Institutions do not abandon

¹ Internal Revenue Service, *Treasury, IRS Move to End Tax-Exempt Status for Discriminatory Practices in Private Schools* (Sept. 3, 2026), <https://www.irs.gov/newsroom/treasury-irs-move-to-end-tax-exempt-status-for-discriminatory-practices-in-private-schools>

² Hailey Talbert, *Could this new admissions tool explain Yale’s post-affirmative action racial demographics?*, YALE DAILY NEWS (Oct. 8, 2024, 7:45 PM), <https://yaledailynews.com/articles/analysis-could-this-new-admissions-tool-explain-yales-post-affirmative-action-racial-demographics>

³ Stephanie Saul & Dana Goldstein, *College Board Cancels Tool for Finding Low-Income High Achievers*, N.Y. TIMES (Sept. 4, 2025), <https://www.nytimes.com/2025/09/04/us/college-board-diversity-landscape.html>

flagship products quietly when those products are lawful.⁴ Although Landscape is gone, the appeal of this illegal practice is not. Admissions offices can replicate the race-proxy program in-house with publicly available tools such as the Opportunity Atlas and U.S. Census Bureau data.

SFFA has likewise seen the same method used in public secondary education—for example, in *Association for Education Fairness v. Montgomery County Board of Education*⁵, in which SFFA has appeared as an amicus while the case is pending at the U.S. Supreme Court. In that case, the Montgomery County Board of Education replaced a test-based magnet admissions process with one weighting each applicant's home and neighborhood, after being told in advance what the change would do to the racial composition of the admitted class.

The Supreme Court anticipated this. It warned that “what cannot be done directly cannot be done indirectly,” and that universities “may not simply establish through application essays or other means the regime we hold unlawful today.” *SFFA*, 600 U.S. at 230. A private school that assigns weight to an applicant's zip code, census tract, or neighborhood for the purpose of achieving a racial result is discriminating on the basis of race under any sensible reading of §1.501(c)(3)-2(b). The Department's final rule regarding racial discrimination in private schools should leave no room for such unlawful manipulation.

SFFA therefore recommends that the final rule or its preamble state two things expressly:

1. That a facially neutral criterion, including geographic location or home address, adopted or applied with the purpose of favoring or disfavoring applicants of a particular race, color, or national or ethnic origin constitutes discrimination "on the basis of" that characteristic within the meaning of paragraph (b), regardless of how the criterion is labeled.
2. That evidence a school selected, weighted, or calibrated a geographic or neighborhood variable by reference to its correlation with race, or measured the variable's success by the racial composition of the resulting class, is evidence of discriminatory purpose.

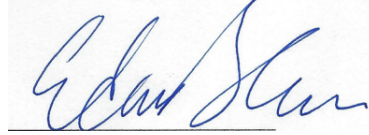
Without such language, the reference to “geographic location” in the Department's public description of the rule will be read by the sector as safe harbor for precisely the race-based practices that the U.S. Supreme Court in *SFFA* expressly forbade.

⁴ See Naomi Schafer Riley, *College Board Games*, COMMENTARY MAG. (Sept. 2025), <https://www.commentary.org/articles/naomi-schaefer-riley/college-admissions-race-games/>

⁵ No. 23-1068, 2026 WL 281028 (4th Cir. 2026), *petition for cert filed*, (U.S. June 29, 2026) (No. 26-12).

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Edward J. Blum", is written over a light blue horizontal line.

Edward J. Blum
President, Students for Fair Admissions