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Room 5503
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Comments on Proposed Regulations Under Section 501(c)(3) – Racial Nondiscrimination in Private Schools (REG–119986–25; RIN 1545–BS05; 91 Fed. Reg. 56811 (September 4, 2026))

Ladies and Gentlemen:

The National Association of Bond Lawyers ("NABL") respectfully submits the following comments on the proposed regulations published on September 4, 2026, that would add new section 1.501(c)(3)-2 to the Income Tax Regulations (the "Proposed Regulations"). The Proposed Regulations would provide that a private school is not operated exclusively for exempt purposes, and, therefore, is not an organization described in section 501(c)(3) of the Internal Revenue Code (the "Code"), 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, for any purpose. The preamble to the Proposed Regulations states that the Treasury Department and the Internal Revenue Service expect to finalize these Proposed Regulations prior to May 31, 2027, and that the rule set forth in the Proposed Regulations would affect private schools for their taxable years beginning after such date. NABL takes no position on the underlying policy objective of the Proposed Regulations. Our comments are limited to the effect of the Proposed Regulations on tax-exempt bonds issued for the benefit of private schools[1] and on the diligence that bond counsel, borrower's counsel, and underwriter's counsel must perform in connection with those bonds.

[1] We note that the scope of private schools may include primary schools, secondary schools, charter schools organized under state law as public schools that are also incorporated as 501(c)(3) nonprofit organizations, colleges, universities, trade schools, professional schools, and others nationwide.

I. NABL's Interest in the Proposed Regulations

NABL is a nonprofit professional association of approximately 2,000 attorneys whose practices include the law of state and local government finance, including the issuance of tax-exempt bonds and similar obligations. Private colleges, universities, trade schools, professional schools, and primary and secondary schools (including charter schools created pursuant to state law as public schools that are also organized as 501(c)(3) nonprofit organizations) regularly avail themselves, as conduit borrowers, of qualified 501(c)(3) bonds under section 145 of the Code, and each year the volume of new issuances of bonds is billions of dollars. The tax-exempt status of interest on those bonds depends on the school borrower continuing to be an organization described in section 501(c)(3) of the Code. Accordingly, bond counsel, borrower's counsel, underwriter's counsel, underwriters, issuers, borrowers, and investors all have a direct interest in the clarity, administrability, and timing of any rule that changes the conditions for maintaining section 501(c)(3) status.

II. Effect on Outstanding and Future Tax-Exempt Bonds

As a general matter, the Proposed Regulations would not change how sections 103 and 141 through 150 of the Code are read or applied. Qualified 501(c)(3) bonds issued under section 145 of the Code require that borrowers of qualified 501(c)(3) bond proceeds maintain their status as organizations described in section 501(c)(3) of the Code for the entire term to maturity of the bonds—typically 20-30 years after issuance. The Proposed Regulations would add requirements that a private school must satisfy to maintain that status. Although the bond-specific rules themselves would be unaffected, the consequences of the Proposed Regulations for bondholders could be severe: if a private school borrower ceases to be described in section 501(c)(3) of the Code, interest on its outstanding qualified 501(c)(3) bonds would become included in gross income. Notably, the Proposed Regulations contain no grace period, grandfathering, or correction mechanism. Investors holding these bonds currently and in the future would bear that risk, possibly even with respect to their prior tax years, although they have no ability to monitor or control a private school's scholarship, admissions, or other programs. This risk also raises a number of challenges with respect to municipal bond disclosure. Issuers and borrowers are required to provide accurate and complete information to investors to allow such investors to make an informed investment decision. The uncertainties raised by section 1.501(c)(3)-2 of the Proposed Regulations and how it will be interpreted and applied may need to be disclosed to investors. Therefore, we request that the Proposed Regulations be withdrawn in their entirety. Absent withdrawal, we request the following clarifications.

A. Prospective application only to outstanding bonds. We request that the final regulations confirm that a failure to satisfy section 1.501(c)(3)-2 of the Proposed Regulations is intended to operate only prospectively, and that such a failure in a taxable year beginning after May 31, 2027 (or after any other date on which the rule in the Proposed Regulations is finalized) will not, by itself, cause interest on bonds issued before that failure (or before the applicability date) to be treated as included in gross income for any period before the date the organization ceases to be described in section 501(c)(3) of the Code. Alternatively, we request that bonds issued before the date final regulations are published be grandfathered from the consequences of a failure under the Proposed Regulations for a reasonable transition period of at least 12 months after the date the final regulations are published.

B. Remedial action or correction mechanism. We request that Treasury and the IRS provide a remedial action or correction procedure that would allow a private school that discovers a noncompliant policy or practice to cure the failure within a reasonable period (for example, by discontinuing or modifying the policy or practice) without loss of section 501(c)(3) status and without adverse consequences to outstanding bonds. Such a procedure could be modeled on the remedial action rules in section 1.141–12 of the Treasury Regulations, the correction approach under section 501(r) of the Code and section 1.501(r)- 2 of the Treasury Regulations, or a dedicated closing agreement or voluntary compliance program comparable to that currently in place to cure certain types of noncompliance events affecting tax-exempt bonds. Given the breadth of the phrase "other school-administered or school-supported program" in the Proposed Regulations, inadvertent or isolated failures are likely, and an all-or-nothing loss of exemption is a disproportionate result for both the institution and its bondholders.

III. Diligence and Interpretive Issues for Counsel

In a qualified 501(c)(3) bond financing, borrower's counsel generally conducts diligence and delivers an opinion that the borrower is an organization described in section 501(c)(3) of the Code, that it is not operated in a manner that would adversely affect that status, and that its use of the bond-financed property will not be considered unrelated trade or business use under section 513 of the Code. Bond counsel must be able to reasonably rely upon borrower's counsel's 501(c)(3) opinion and often conducts its own additional research. Moreover, in representing their client, underwriter's counsel often also conducts diligence regarding the borrower's 501(c)(3) status. While opinions delivered in connection with a municipal bond issuance speak only as of their date, they are based upon expectations regarding use of the bond financed facilities and maintenance of nonprofit status of the borrower over the life of the bonds. The Proposed Regulations would significantly affect the diligence process, making it difficult to render a principled opinion as to a borrower's 501(c)(3) status, which would adversely affect bond counsel's ability to deliver an unqualified opinion of bond counsel upon which bondholders significantly rely. These two issues could effectively shut private schools out of the market for tax-exempt publicly offered bonds and direct placement bonds. We request guidance on the following questions:

1. *Existing and ongoing scholarships.* Many private schools administer multi-year scholarships whose recipients were selected before the applicability date using criteria that would now be prohibited. Does the continued disbursement of an award to a recipient selected before the applicability date constitute "maintaining" or "enforcing" a discriminatory policy or practice? We request that the final regulations provide that awards made before the applicability date may continue to be paid to existing recipients in accordance with their terms without affecting the private school's exempt status.

2. *Donor-restricted funds.* The preamble acknowledges that private schools may need to work with donors or their heirs to modify race-based eligibility criteria in endowed scholarships. In many states, modifying a restricted charitable gift requires donor consent or a court proceeding (such as cy pres or proceedings under the Uniform Prudent Management of Institutional Funds Act), which may not be completed before the applicability date or by the end of that private school's fiscal year. We request guidance on whether a private school that holds, but does not award from, such a fund, or that has commenced good-faith efforts to modify the restriction, is treated as maintaining a discriminatory policy. We also request clarification of whether commonly

used "pool and match" arrangements, under which a restricted fund is honored but other institutional funds are allocated so that no student is disadvantaged, are permissible.

3. *Scope of covered programs and "for any purpose."* We request examples illustrating what constitutes an "other school-administered or school-supported program," and whether the rule reaches, for example, formal instruction in history and sociology, affinity events and observances, student organizations, faculty and staff matters, third-party scholarships or programs that a school merely publicizes or hosts, and activities of affiliated or related organizations (including separately incorporated foundations and obligated group members). Without such guidance, borrower's counsel cannot determine the scope of diligence required or whether a private school's exempt status has been jeopardized.

4. *How loss of status operates.* Section 1.501(c)(3)-2(a) of the Proposed Regulations provides that a noncompliant private school is not described in section 501(c)(3) of the Code "with respect to any taxable year" described in paragraph (d). We request confirmation of whether loss of status is determined on a year-by-year basis and applies only to the taxable year or years in which the failure occurs; whether status is automatically restored once the failure is corrected; whether loss of status takes effect only upon a revocation by the IRS and, if so, as of what date; and how these rules interact with existing revocation procedures and with Rev. Proc. 75–50, as modified.

5. *Religiously based and other permitted criteria.* The preamble states that the Proposed Regulations would not preclude selection on the basis of religious affiliation or the use of criteria such as income, geography, or first-generation status. We request that these statements be incorporated into the regulatory text, together with guidance on whether or when a facially neutral criterion that correlates with race would be treated as discriminatory.

IV. Applicability Date and Transition Relief

As noted above, Treasury and the IRS expect that the Proposed Regulations will apply to taxable years beginning after May 31, 2027. For a school with a fiscal year beginning June 1 or July 1, that date could fall only a few days or weeks after the final regulations are published. That period is insufficient for schools to review all of their programs, obtain donor consents or court approvals, and amend policies, and for counsel to update diligence procedures. Therefore, we request that the applicability date be deferred to taxable years beginning at least 12 months after publication of final regulations, and that the transition relief requested above be adopted.

V. Conclusion

NABL appreciates the opportunity to comment on the Proposed Regulations and would welcome the opportunity to discuss these comments with Treasury and IRS personnel. Please contact Brian Egan, NABL Chief Policy Officer, at (202) 503-3290 or began@nabl.org with any questions.