

Submitted via www.regulations.gov under [DOE-HQ-2025-0025](#)

Chris Wright, Secretary
U.S. Department of Energy
c/o David Taggart
Office of the General Counsel
1000 Independence Avenue SW
Washington, DC 20585

RE: Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs, Docket Number DOE-HQ-2025-0025

To Whom It May Concern:

I am writing on behalf of the Students' Civil Rights Project at Public Justice. Public Justice is a nonprofit legal advocacy organization that takes on the biggest systemic threats to justice of our time—abusive corporate power and predatory practices, the assault on civil rights, and the destruction of the earth's sustainability. Public Justice's Students' Civil Rights Project combines high-impact litigation with other advocacy tools to combat discrimination in schools. We strive to create systemic change so all students can learn and thrive, and to secure justice for students who are denied educational opportunities based on their race, national origin, ethnicity, or sex, including sexual orientation, gender identity, and gender expression. We represent students at all stages of litigation, including pre-suit negotiations, litigation in trial courts, appeals, and oppositions to cert petitions.

This is a **significant adverse comment** opposing the direct final rule (DFR), "Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs."¹ This DFR would rescind a critical protection contained in the Department of Energy (DOE)'s regulations implementing Title IX of the Education Amendments of 1972 (Title IX)—namely, 10 C.F.R. § 1042.110(b), which ensures women and girls have opportunities to participate in educational programs. This regulation allows schools to take proactive steps to help overcome the effects of discrimination that have resulted in the underrepresentation of women and girls in certain educational fields, such as in Science, Technology, Engineering, and Mathematics (STEM) fields and technical training.

All students benefit from diverse learning environments, but despite some progress toward gender equity, women—and particularly women of color—continue to be underrepresented in certain fields of study, like STEM. Gender-conscious programs help overcome the effects of discrimination that have prevented women and girls from pursuing certain careers. Schools can and should create policies to increase girls' participation in fields where they continue to be

¹ Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 90 Fed. Reg. 20788 (May 16, 2025), <https://www.federalregister.gov/documents/2025/05/16/2025-08594/rescinding-regulations-related-to-nondiscrimination-on-the-basis-of-sex-in-education-programs-or> [hereinafter "Title IX DFR"].

underrepresented, including by offering programs, scholarships, and other services to expand women and girls' participation.

This DFR is also an unlawful and inappropriate use of DFRs. DFRs can be proposed only to make routine or “noncontroversial” changes to federal regulations to expedite the rulemaking process. DOE is wrong to assert that the changes in this DFR are “noncontroversial” because the removal of this protection would undermine the spirit and purpose of Title IX, which is to ensure that schools can help overcome the effects of discrimination that have long prevented women and girls from pursuing certain fields of study or careers.

For these reasons, and as explained in more detail below, **we urge DOE to withdraw the DFR that would rescind Section 1042.110(b).**

I. DOE’s use of DFRs to rescind 10 C.F.R. § 1042.110(b) is unlawful under the Administrative Procedures Act and bypasses review required by Executive Orders 12250 and 12866.

DFRs are meant only for routine or “uncontroversial matters” where no adverse comments are anticipated. This DFR is neither routine nor uncontroversial: in fact, rescinding this civil rights protection would result in significant harm to students by robbing them of opportunities to participate in certain educational programs, as discussed below. Thus, this DFR violates the Administrative Procedure Act (“APA”) by forgoing the typical notice-and-comment rulemaking process.

In 1980, DOE first published its own final Title IX regulations² addressing protections against sex discrimination in educational programs or activities operated by recipients of federal financial assistance.³ The DOE’s regulations mirrored the Department of Education’s Title IX regulations, which were finalized in 1975 after Congressional review, indicating legislative approval for these Title IX protections.⁴ DOE now seeks to rescind its Title IX regulation—a regulation that was adopted decades ago through the notice-and-comment rulemaking process, which promoted transparency by allowing public participation and required careful consideration of public comments. If the DOE’s longstanding Title IX rule is to be changed in substance, then under the APA, it must be amended through the same process, not through the expedited DFR process.⁵

² 45 Fed. Reg. 40514, available at <https://www.govinfo.gov/content/pkg/FR-1980-06-13/pdf/FR-1980-06-13.pdf>.

³ 10 C.F.R. § 1040. After notice and comment on a proposed Title IX common rule by the Department of Justice and other agencies, 64 Fed. Reg. 58567, a final common Title IX rule for various agencies was published on August 30, 2000. 65 Fed. Reg. 52858. DOE replaced its previous regulations with provisions of this common rule in 2001. See 66 Fed. Reg. 4627.

⁴ 40 Fed. Reg. 24137, available at <https://www.govinfo.gov/content/pkg/FR-1975-06-04/pdf/FR-1975-06-04.pdf>.

⁵ The Supreme Court has stated unequivocally that the APA “mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.” *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015) (citing *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

Although there is a “good cause” exception to the typical notice and comment rulemaking process,⁶ this DFR does not qualify for it. To qualify for the “good cause” exception, the APA requires an agency to state in its Federal Register notice why it has determined there is good cause to bypass the typical notice-and-comment rulemaking process.⁷ Yet, DOE did not offer any basis for why it did not need to engage in the notice-and-comment process, stating only that the regulation it rescinds—a regulation that promotes equal educational opportunities for women and girls—is unnecessary. Given the public interest in protecting against sex discrimination, no “good cause” exists for bypassing notice-and-comment.

Moreover, E.O. 12250 requires the Attorney General to review and approve certain proposed and final civil rights rules promulgated by federal agencies, including rules to implement and enforce Title IX.⁷ However, the DOE failed to obtain the Attorney General’s review and approval of this DFR.⁸

Any rule change must also comply with E.O. 12866, which requires the Office of Information and Regulatory Affairs to review a “significant regulatory action”—meaning “any regulatory action that is likely to result in a rule that may: [h]ave an annual effect on the economy of \$100 million or more or adversely affect [the economy] in a material way,” “[c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency,” or “[r]aise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.”⁸ This DFR is a significant regulatory action⁹ that would, by discouraging schools from taking steps to address barriers to educational opportunities for women and girls, have a direct impact on the educational degrees, career attainment, and ultimately, lifetime earnings and financial well-being of millions of girls and women.¹⁰ It also creates an inconsistency with the over 20 federal agencies that have Title IX regulations with a parallel rule allowing schools to engage in affirmative action to remedy the effects of past discrimination in education, and it would constitute a significant departure from longstanding legal interpretations of Title IX, raising novel issues and policy concerns about equity for women and girls in education.

Although the government should never seek to limit people’s rights or to take away tools that protect people from discrimination, they *absolutely* shouldn’t be making such major changes without engaging in the appropriate regulatory process.

⁶ 5 U.S.C. § 553.

⁷ *Id.* at § 553(b).

⁸ Exec Order No. 12,866, § 3(f), 58 Fed. Reg. 190 (Oct. 4, 1993).

⁹ *Id.* at § 6(a). *See also* Off. of Management and Budget, Guidance for Implementing E.O. 12866, 5–6 (Oct. 12, 1993), available at https://bidenwhitehouse.archives.gov/wp-content/uploads/legacy_drupal_files/omb/assets/inforeg/eo12866_implementation_guidance.pdf.

¹⁰ *See* The Conference Board, *Policy Backgrounder: The Continuing Gender Wage Gap* (Apr. 25, 2024), <https://www.conference-board.org/pdfdownload.cfm?masterProductID=50517>; *The STEM Labor Force: Scientists, Engineers, and Skilled Technical Workers* (May 30, 2024), <https://nces.nsf.gov/pubs/nsb20245/executive-summary>.

II. Rescinding 10 C.F.R. § 1042.110(b) would seriously harm educational opportunities for women and girls.

For decades, agencies' Title IX regulations have allowed educational institutions to take proactive steps consistent with law to overcome the effects of conditions that resulted in limited participation across a range of educational programs by persons of a particular sex—even in the absence of a finding of discrimination on the basis of sex in a particular program.¹¹ This protection has helped increase the participation of women and girls in areas where they are underrepresented due to historical inequities and stereotypes, such as in STEM fields.

DOE's rescission of § 1042.110(b) is based on an incorrect premise that the regulation is unnecessary. DOE asserts the rule “contains no substantive right or obligation” and only *permits* schools to take affirmative action.¹² In stating what is permissible, the regulation provides clarity to schools concerning lawful affirmative action. Rescinding the rule would create confusion and result in backsliding. Gender gaps harming women and girls in certain fields remain significant, thus necessitating schools to take affirmative action to support increased participation of women and girls in those fields. For example, there continues to be a large disparity between the percentages of men and women working in STEM: in 2023, women made up only 28% of the STEM workforce.¹³ The underrepresentation of women in STEM is due in large part to deeply entrenched and unlawful stereotypes about women and girls that have led to associating certain fields with masculine qualities and dissuading girls and women from pursuing certain careers (including construction, certain STEM fields, automotive service, electrical work, piloting, firefighting, etc.).¹⁴ Moreover, structural barriers, such as outright discrimination in hiring,¹⁵ lack of family-friendly policies,¹⁶ and rampant workplace harassment and discrimination also contribute to the underrepresentation of women in these fields.¹⁷ Women and girls have also had difficulty finding role models and mentors when considering entering these fields in the first

¹¹ See Nat'l Women's Law Center, *Making the Case: Gender-Conscious Programs in Higher Education* (Nov. 2020), available at <https://nwlc.org/resource/making-the-case-gender-conscious-programs-in-higher-ed/>.

¹² Title IX DFR at 20788.

¹³ MIT, *The Gender Gap in STEM: Still Gaping in 2023*, <https://professionalprograms.mit.edu/blog/leadership/the-gender-gap-in-stem/>.

¹⁴ See MIT, *The Gender Gap in STEM: Still Gaping in 2023*, <https://professionalprograms.mit.edu/blog/leadership/the-gender-gap-in-stem/>.

¹⁵ Stephanie Mabel Kong et al., *Reducing gender bias in STEM*, 1 MIT SCIENCE POLICY REV. 55, 55 (2020), available at https://www.researchgate.net/publication/343770759_Reducing_gender_bias_in_STEM#pf7.

¹⁶ *Id.* at 58.

¹⁷ See, e.g., Pew Research Center, *Women and Men in STEM Often at Odds Over Workplace Equity* (Jan. 9, 2018), <https://www.pewresearch.org/social-trends/2018/01/09/women-and-men-in-stem-often-at-odds-over-workplace-equity/>; Kesluk Silverstein, Jacob & Morrison, P.C., *Do STEM Jobs Have a Gender Discrimination Problem?* (describing a \$19.5 million settlement of a gender discrimination claim that women were given fewer promotions and paid less than male workers), <https://www.californialaborlawattorney.com/blog/do-stem-jobs-have-a-gender-discrimination-proble/>.

place.¹⁸ Further, unconscious biases impacting hiring decisions, grant funding, and promotions continue to be unconscious biases that disadvantage women and girls,.

Thus, schools must be permitted to continue to take steps to overcome the effects of discrimination that has harmed women and girls. In fact, DOE has previously recognized the importance of Title IX protections for women and girls in STEM, stating that Title IX helps to secure “a clean energy future by closing the gender gap in math and science.”¹⁹ As DOE noted then, Title IX is critical to “ensure that the recruitment, retention, training and education practices at the school are inclusive for both men and women.”²⁰

III. Conclusion

In conclusion, DOE’s attempt to use a DFR to rescind 10 C.F.R. § 1042.110(b) is unlawful. Rescinding this regulation will undermine schools’ ability to safeguard equal educational opportunities for women and girls and ensure they are not limited in the careers they can pursue because of longstanding gender-based barriers to participation in certain fields. Eliminating this regulation will in fact exacerbate barriers to women’s and girls’ educational success and career opportunities. Accordingly, **we urge DOE to withdraw this DFR.** Thank you for considering this significant adverse comment.

Sincerely,

Patrick Archer
Legal Fellow
Students’ Civil Rights Project
Public Justice

¹⁸ See Jenny Bird & Ismael Mourifié, *Why might women not pursue a career in STEM?* (Apr. 28, 2025), <https://artsci.washu.edu/ampersand/why-might-women-not-pursue-stem-career-ismael-mourifie#:~:text=Another%20hypothesis%20involves%20gender%20profiling,STEM%20education%2C%20effectively%20profiling%20herself.>

¹⁹ U.S. Dep’t of Energy, *Title IX: More Than Just Sports* (June 23, 2011), <https://www.energy.gov/articles/title-ix-more-just-sports>.

²⁰ *Id.*