June 16, 2025

Submitted via www.regulations.gov under DOE-HQ-2025-0016

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: Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance, Docket Number DOE-HQ-2025-0016

To Whom It May Concern:

On behalf of the members and supporters of the American Association of University Women (AAUW), I write to register a **significant adverse comment** opposing the Department of Energy's direct final rule (DFR), "Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance." Since 1881, AAUW has championed gender equity in education and economic opportunity; safeguarding robust Title IX protections is central to that mission.

The proposed DFR would strip out 10 C.F.R. § 1042.450—the long-standing regulation that lets students whose sex has historically been denied athletic opportunities (most often women and girls) try out for a sex-separated team when no equivalent team exists for them. Eliminating this rule would let schools field only men's or boys' teams in non-contact sports such as baseball, tennis, swimming, or badminton—effectively banning women and girls from participation and rolling back decades of progress.

Such a sweeping change is neither "routine" nor "noncontroversial," making DOE's use of the expedited DFR process unlawful and contrary to the spirit and purpose of Title IX. AAUW therefore urges DOE to withdraw the rule and instead preserve—and fully enforce—the regulations that guarantee equal athletic opportunity for all students.

For these reasons, and as explained in more detail below, **we urge DOE to withdraw the DFR that would rescind Section 1042.450**.

I. DOE's use of a DFR to rescind 10 C.F.R. § 1042.450 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 play sports, 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 regulations addressing protections against sex discrimination in educational programs or activities operated by recipients of federal financial assistance. 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. 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.

Although there is a "good cause" exception to the typical notice and comment rulemaking process, 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. 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 athletic opportunities—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. However, the DOE failed to obtain the Attorney General's review and approval of this DFR.

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." This DFR is a significant regulatory action that would, by removing athletic opportunities from women and girls, have a direct impact on the lifetime earnings and financial well-being of millions of women and girls. It also creates an inconsistency with the over 20 federal agencies that have Title IX regulations with a parallel rule regarding the right to try out for single-sex teams, and it would constitute a significant departure from longstanding legal interpretations of Title IX, raising novel issues and policy concerns about equity and fairness for women and girls in sports.

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.

II. **Rescinding 10 C.F.R. § 1042.450 would cause substantial harm to women and girls by eliminating equal opportunities to participate in sports.**

By removing a right that would provide more opportunities to play for women and girls, the DFR would cause substantial harm. Playing sports is a crucial part of a student's education, including for women and girls. It is well documented that sports participation is linked to higher grades and scores on standardized tests and increased graduation rates, as well as lower rates of depression and higher levels of self-esteem. Accordingly, requiring schools to provide athletic opportunities to students by permitting them to try out for a team otherwise unavailable to them is crucial to ensuring they receive the full benefits of an education.

Approximately 60 million American youth engage in sports, yet girls face significant barriers, participating at a lower rate due to issues like inadequate facilities, lack of safe transportation, and societal discrimination. Nearly 3.5 million girls play high school sports, but they are afforded over 1 million fewer opportunities than boys to do so. In fact, although girls comprise nearly 50 percent of high school students, schools provide them with only 43 percent of the athletic opportunities. The state of play is even worse for girls of color, who receive fewer opportunities than both white girls and boys of color. College women face similar challenges. More than 200,000 women play sports in college, yet they receive almost 60,000 fewer athletics opportunities than college men.

The benefits of sports participation affect not just women and girls but society as a whole. Students who play sports are more likely to graduate from high school, score higher on standardized tests, and have higher grades. Black and Latina women who play Division I college sports are 14 percent and 6 percent more likely, respectively, than their non-athlete peers to graduate from college. Student athletes are also more likely to have higher levels of confidence, more positive body image, greater psychological wellbeing, and lower levels of depression.

Sports participation also provides career benefits: girls who play sports in high school go on to earn 7 percent higher annual wages than their nonathlete peers, and more than 90 percent of women executives report having played sports growing up.

DOE asserts Section 1042.450 needs to be rescinded because it "ignores differences between the sexes." However, as long as boys continue to enjoy significantly more opportunities for athletic competition than girls, opening boys' teams to girls should be viewed as leveling the playing field for girls. When a school does not offer a team for girls in a particular sport, a school must allow the girl to try out to participate on the boys' team when girls are underrepresented among a school's athletes and possess the interest and ability to participate. Additionally, there are many examples of competitions in which females and males on the same team and in equal numbers compete against identical number of females and males on the opposing team, including mixed doubles in tennis, coed volleyball and coed basketball.

DOE also states that the rescission is necessary to align with Trump's anti-trans sports ban executive order, which it claims promotes "fairness" and "safety" for women and girls. Yet, that executive order unlawfully discriminates against transgender women and girls by banning them from playing on women and girls' sports teams. The anti-trans sports ban executive order also makes sports less safe and fair for women and girls by inviting invasive scrutiny of any woman or girl who does not conform to sex-based stereotypes. DOE's rationale also assumes that masculinity is associated with athleticism and strength and femininity with weakness, which are the same stereotypes historically used to exclude women and girls from athletic opportunities, and which Title IX was enacted to stop. Further, the Trump administration's anti-trans sports ban executive order does nothing to actually protect women's and girls' rights to play sports; it does not provide more opportunities to play sports—as Section 1042.450 does—nor does it provide more resources for women and girls' teams to mitigate the extreme unequal treatment they face compared to men and boys' sports teams. As evident by this DFR, the Trump administration is instead intent on harming all women and girls, rather than "protecting" them.

III. **Conclusion**

In conclusion, DOE's attempt to use a DFR to rescind 10 C.F.R. § 1042.450 is unlawful. In attempting to rescind this regulation, DOE contradicts its own rationale of increasing "fairness" for women and girls, as this regulation has been a major pathway for ensuring their participation in sports they would otherwise

not have the ability to play. Eliminating this regulation will undermine access to the educational benefits of sports participation. For this reason, **AAUW urges DOE to withdraw this DFR**. Thank you for considering this significant adverse comment.

Sincerely,

Meghan Kissell, MSW
Senior Director, Policy & Member Advocacy