



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:

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 direct final rule (DFR), “Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs.”¹ Since 1881, AAUW has championed gender equity in education and the workplace, and we know—from decades of research and on-the-ground advocacy—that Title IX’s proactive protections are indispensable to closing the persistent STEM gap and unlocking the full economic and innovative potential of women in the United States.

Unfortunately, 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 Science, Technology, Engineering, and Mathematics (STEM) fields and technical training. Should this DFR advance, it would be a terrible setback to women's progress in STEM fields.

All students benefit from diverse learning environments, yet despite some progress toward gender equity, women—especially women of color—remain underrepresented in STEM fields. According to the National Science Foundation (NSF), in 2020 women earned only 43 percent of bachelor’s degrees in physical and earth sciences, 26 percent in mathematics and computer sciences, and 24 percent in engineering. By contrast, women earned 66 percent of bachelor’s degrees in social and behavioral sciences and 64 percent in agricultural and biological sciences. NSF data also show that although Black or African Americans comprised 14 percent of the U.S.

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”].



population ages 18–34 in 2021, they received just 9 percent of science and engineering bachelor’s degrees. Likewise, while Hispanic or Latino individuals represented 22 percent of that age group, they earned only 17 percent of science and engineering bachelor’s degrees. Gender-conscious programs help counter the discrimination that has long steered women and girls away from certain careers. Schools should create policies that expand girls’ participation in underrepresented fields, including targeted programs, scholarships, and other supports.

Such a sweeping change is neither “routine” nor “noncontroversial.” 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, **AAUW urges 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.**

Since 1881, AAUW and our 170,000 members have fought to ensure every student can learn, lead, and thrive—making us acutely aware that direct final rules (DFRs) are reserved for routine, truly “uncontroversial” housekeeping matters that draw no opposition. The Department of Energy’s proposal is anything but routine: rescinding this bedrock civil-rights safeguard would strip students—especially women and girls—of opportunities to participate in educational programs, inflicting significant and measurable harm. By sidestepping the required notice-and-comment process, the rule also violates the Administrative Procedure Act (APA), compounding its substantive dangers with a procedural flaw.

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,

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>.



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

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

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)).

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>.



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.

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,

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/>.



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 in finding role models and mentors when considering entering these fields in the first place.¹⁸ Further, there continues to be unconscious biases that disadvantage women and girls, impacting hiring decisions, grant funding, and promotions.

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 notes, 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

AAUW’s on-the-ground experience proves why § 1042.110(b) must stand. Since 1881 we have invested more than \$146 million in fellowships and grants for more than 14,000 women scholars; powered Tech Trek camps and STEMEd for Girls sessions that ignite middle- and high-schoolers’ passion for coding, robotics, and design; and funded Community Action Grants that launch drone clubs in rural Montana, bio-design workshops at HBCUs, and bilingual data-science cohorts along the Texas border—concrete, community-rooted strategies that flourish precisely because schools know Title IX allows proactive measures to remedy past discrimination.

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/>.

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.*



III. Conclusion

In conclusion, DOE's attempt to use a DFR to rescind 10 C.F.R. § 1042.110(b) is unlawful. Weakening that legal clarity would chill the very programs that move women and girls into the laboratories, studios, and data centers shaping our future. We need more of these opportunities, not fewer. **AAUW therefore urges the Department to withdraw this DFR** and preserve robust Title IX protections so every student—regardless of sex—can learn, lead, and thrive.

Sincerely,

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