LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

1500 K Street, NW
Suite 900
Washington, DC 20005

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

June 15, 2025

David Taggert
Office of the General Counsel
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Re: Department of Energy's Direct Final Rule: Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions

Dear Mr. Taggert:

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") submits this **significant adverse comment** opposing the Department of Energy's ("DOE") effort to issue a direct final rule (DFR) amending longstanding regulations under Title VI of the Civil Rights Act of 1964 ("Title VI"). The DFR, Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions), seeks to remove critical and established civil rights protections by means of an inappropriate and expedited administrative procedure. We urge **immediate withdrawal** of the DFR, which is flawed with respect to both substance and process.

The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today. Today, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real.

For decades, the Lawyers' Committee has advocated for robust federal enforcement of Title VI, which provides critical safeguards against discrimination based on race, color, and national origin by recipients of federal financial assistance. These tools and safeguards include agency regulations like the one this DFR seeks to eliminate, which prohibits recipients from taking actions that have an unjustified disparate impact based on race, color, or national origin.

The DFR proposes to dismantle these guardrails for preventing and addressing discrimination, thereby undermining equity for Black people and other communities of color. Through our work across numerous project areas, including in the context of arbitrary and discriminatory educational, employment, and zoning and land use policies, the Lawyers' Committee regularly sees the importance of preserving every tool available – including lawful and well-established disparate impact standards – to combat continued race-based inequalities.

For the reasons discussed below, the DFR must be withdrawn because it is both procedurally and substantively unsound. Contrary to the purpose of Title VI, the direct rule will serve to more deeply entrench and even worsen inequality by removing lawful and vital tools for effective civil rights enforcement.

I. Department of Energy's DFR jettisons crucial civil rights protections and undermines full enforcement of Title VI.

The Department of Energy provides financial assistance, including over $2.5 billion annually through research grants, to over 300 colleges and universities and research institutions. It also provides financial support to schools, universities, and research institutions to develop new energy-efficient technologies, encourage historically underrepresented groups' entry into STEM fields, and make infrastructure updates. Because the Department of Energy has a responsibility to ensure that its funding is used in compliance with federal anti-discrimination laws, it must monitor and enforce compliance and provide technical assistance to recipients.

In enacting Title VI, Congress delivered a mandate that federal agencies address policies and practices that perpetuate or entrench unlawful discrimination in education, health care, economic opportunity, and other federally funded programs and activities.[1] Title VI directs federal departments and agencies that extend federal financial assistance to "effectuate the provisions of" Title VI "by issuing rules, regulations, or orders of general applicability."[2] Like other federal agencies, the Department of Energy's Title VI regulations have for decades prohibited recipients from taking any action "with the . . . *effect* of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex," a form of discrimination known as "disparate impact."[3] The DFR, among other harmful changes, would eliminate the Department of Energy's longstanding ability to address disparate impact discrimination by entities that accept DOE funding.

[1] 42 U.S.C. § 2000d.
[2] 42 U.S.C. § 2000d-1.
[3] 10 C.F.R. § 1040.13(d) (emphasis added).

By narrowing the scope of prohibited conduct to that which can be shown to be intentionally discriminatory, this DFR guts a key tool to root out policies that unjustifiably harm some groups more than others and severely limits opportunities for people to seek redress for discrimination. Disparate impact standards recognize that neutral policies and practices can still cause significant, disproportionate, discriminatory harm. – In these instances, federally funded entities must be able to show that such policies are justified by a substantial, legitimate reason and that there is no less discriminatory alternative available. The disparate impact regulations ensure that public funds – to which all taxpayers contribute, irrespective of race, color, national origin, or sex – are not spent in any fashion that causes or entrenches discrimination. As the United States Supreme Court has explained, policies that appear neutral on their face may be traceable to the nation's long history of invidious race discrimination in employment, education, housing, and many other areas.[4] What is required by Title VI, and effectuated by these regulations, is the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

Further, Title VI and other civil rights laws have long incorporated a disparate impact approach because discriminatory motives are often covert, and therefore difficult to expose and prove directly. Federal agencies, Congress, and the Supreme Court have all recognized that in the context of civil rights enforcement, intent-based enforcement may be insufficient to root out hidden, pernicious, and persistent biases.[5] Disparate-impact analysis provides an important tool for "uncovering discriminatory intent: It permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment."[6]

In addition, the DFR would remove requirements that a recipient must "take reasonable steps" to provide "information in appropriate languages" to persons who "require[] service or information in a language other than English in order to be informed of or to participate in the program."[7] Based on the most recent U.S. Census data, 22% of people in the U.S. speak a language other than English at home, and 8.4% of people in the U.S. speak English "less than very well."[8] Without this regulation, recipients of DOE funding

---

[4] *See Griggs v. Duke Power Co.*, 401 U.S. 424, 430–31 (1971); *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980); *Gaston Cty. v. United States*, 395 U.S. 285, 297 (1969).

[5] *See Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project*, 576 U.S. 519, 538–39 (2015).

[6] *Id.* at 540.

[7] 10 C.F.R. § 1040.5(c).

[8] U.S. Census Bureau, Am. Cmty. Survey, B16001*, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over* (2022), B16001: Language Spoken at Home by … - Census Bureau Table; https://perma.cc/CQ54-M892.

would have no obligation to "take *reasonable* steps (emphasis added)" for approximately 28.5 million people (i.e., roughly 8.4% of the U.S. population) to be informed about or be able to participate in and benefit from Department of Energy-funded programs. All people in this country, regardless of the language they speak, deserve meaningful access to programs and activities that are conducted or supported by federal agencies. For more than five decades, agencies, recipients, and the public have all understood this obligation to flow from Title VI.[9] The DFR's erasure of this text and obligation represents a significant and dramatic shift from decades of clear government statements, regulations, and guidance, to the potential detriment of 28.5 million people in this country.

II. Department of Energy's use of a DFR to effectuate these rule changes is improper under the Administrative Procedures Act and bypasses review required by Executive Orders 12250 and 12866.

Direct final rules (DFRs) may only be used for rule changes that are noncontroversial and unlikely to elicit public comment or objection.[10] Here, the DFR seeks to upend

---

[9] *See, e.g.*, Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000); U.S. Dep't of Just., Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency, 65 Fed. Reg. 50,123 (Aug. 16, 2000); U.S. Dep't of Just., Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,; Improving Access to Services for Persons with Limited English Proficiency, Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000); DOJ LEP Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 at 41,461 (June 18, 2002); Off. of the Att'y Gen., Memorandum to Heads of Department Components Regarding Language Access Obligations Under Executive Order 13166 (June 28, 2010); Off. of the Att'y Gen., Memorandum to Heads of Federal Agencies, General Counsels, and Civil Rights Heads Regarding Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 (Feb. 17, 2011); U.S. Dep't of Just., C.R. Div., Fed. Coordination & Compliance Section, Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs (2011); U.S. Dep't of Just., C.R. Div., Commonly Asked Questions & Answers Regarding Executive Order 13166 (2019).

[10] ACUS explains that the direct final rulemaking device is "justified by the Administrative Procedure Act's 'good cause' exemption from notice-and-comment procedures where they are found to be 'unnecessary.' The agency's solicitation of public comment does not undercut this argument, but rather is used to validate the agency's initial determination." *See* Admin. Conf. of the U.S., Recommendation 95-4 (June 15, 1995), https://www.acus.gov/sites/default/files/documents/95-4.pdf. The D.C. Circuit has explained that the "unnecessary" "prong of the good cause inquiry is 'confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'" *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 94 (D.C. Cir. 2012) (quoting *Util. Solid Waste Activities Grp. v. E.P.A.*, 236 F.3d 749, 755 (D.C. Cir. 2001)). *See also* Reed Shaw, *Setting the Record Straight on the APA's "Good Cause" Exception*, NOTICE & COMMENT: YALE J. ON REG. BLOG (May 16, 2025), https://www.yalejreg.com/nc/setting-the-record-straight-on-the-apas-good-cause-exception-by-reed-shaw/. *See also* Admin. Conf. of the U.S., Recommendation 2024-6 (Dec. 12, 2024), https://www.acus.gov/sites/default/files/documents/Public-Engagement-Agency-Rulemaking-Good-Cause-Exemption-Final-Recommendation.pdf; Off. of the Fed. Registrar, *A Guide to the Rule Making*

longstanding protections against policies that have a discriminatory effect, thereby removing a vital tool for effective civil rights enforcement. Similarly, the Department of Energy seeks to roll back language access provisions that have for decades provided meaningful access to people with limited English proficiency. No reasonable argument can be made that such changes are routine, technical, or noncontroversial. Amending these rules through an expedited DFR, without any reasoned explanation and without good cause, thus violates the Administrative Procedure Act ("APA") by forgoing the typical notice-and-comment rulemaking process.

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."[11] This DFR is a significant regulatory action that involves important and disputed policy and legal questions, will create inconsistency with the rules of other federal agencies, and will have broad impacts on recipients of Department of Energy funds and the people who benefit from their programs. In addition to bypassing review under E.O. 12866, DOE also failed to comply with E.O. 12250, which requires that the Department of Justice review and approve certain proposed and final civil rights rules promulgated by federal agencies, including rules to implement and enforce Title VI.[12]

III. Conclusion.

Rather than effectuate Title VI's nondiscrimination purpose and mandate, the direct final rule (DFR) opens the door to *more* unlawful discrimination by upending longstanding protections against policies that have an unjustified discriminatory effect. The DFR eliminates DOE's ability to address artificial, arbitrary, and unnecessary barriers that operate invidiously to discriminate on the basis of race. Further, it seeks to do so through an expedited process that is especially inappropriate for a rule change of this import.

Process, https://uploads.federalregister.gov/uploads/2013/09/The-Rulemaking-Process.pdf; Recommendation 95-4, *supra*. .

[11] Exec. Order No. 12,866, § 3(f), 58 Fed. Reg. 51,735 (Sept. 30, 1993).

[12] Exec. Order No. 12,250, *Leadership and Coordination of Nondiscrimination Laws*, reprinted at 45 Fed. Reg. 72,995 (Nov. 4, 1980).

As an organization dedicated to combating racial discrimination and its persistent effects in education, housing, economic opportunity, and many other aspects of American life, the Lawyers' Committee opposes this DFR and urges its immediate withdrawal. If you have any questions or need additional information, please contact Michael Pillera, Director of the Educational Opportunities Project, at MPillera@lawyerscommittee.org.

Sincerely,

/s/ Michael Pillera
Michael Pillera[13], Director
Educational Opportunities Project

/s/ Shaheena Simons
Senior Advisor, Strategy & Programs

[13] Not admitted to the D.C. Bar; practice supervised by D.C. Bar Members