

November 17, 2025

David Taggart
U.S. Department of Energy
Office of General Counsel, GC-1
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Dear Mr. Taggart,

The Bazelon Center for Mental Health, Disability Rights Education and Defense Fund (DREDF), the Legal Defense Fund (LDF), the National Women’s Law Center (NWLC), and the undersigned nine civil rights organizations write to urge the U.S. Department of Energy (DOE) to withdraw three Direct Final Rules (DFRs) issued on May 16, 2025.¹ Agencies may only use the DFR process, skipping the usual notice-and-comment rulemaking process under the Administrative Procedures Act (APA), to expedite “noncontroversial” rulemaking where the rules do not result in “significant adverse comments.”² DOE’s DFRs would rescind longstanding, major protections under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title VI of the Civil Rights Act of 1964 (Title VI), and Title IX of the Education Amendments of 1972 (Title IX). These changes cannot be characterized as noncontroversial. In fact, each DFR elicited thousands of comments in opposition, and DOE has acknowledged that these constitute “significant adverse comments.” Although DOE delayed the effective date of these rules, delay alone is not sufficient to satisfy the APA. We urge DOE to withdraw the DFRs and, if it intends to continue with these misguided measures, to initiate a new notice-and-comment process. We request a meeting at your earliest convenience to discuss these concerns.

I. Rules rescinding longstanding civil rights protections are inherently controversial and inappropriate for DFRs.

These DFRs remove opportunities for girls and women to participate in programs that seek to increase their participation in fields where they are underrepresented; remove regulations that address accessibility in buildings and education; and remove regulations that address the unjustified discriminatory impacts of policies and practices that harm underserved communities, particularly Black communities and other communities of color. Removal of these protections through the DFRs is not only procedurally deficient, but substantively harmful. Repealing the targeted provisions would undercut DOE

¹ Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 90 Fed. Reg. 20,788 (May 16, 2025), <https://www.federalregister.gov/documents/2025/05/16/2025-08594> [hereinafter, “Title IX DFR”]; Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions), 90 Fed. Reg. 20,777 (May 16, 2025), <https://www.federalregister.gov/documents/2025/05/16/2025-08593> [hereinafter, “Title VI and Section 504 DFR”]; Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities, 90 Fed. Reg. 20,783 (May 16, 2025), <https://www.federalregister.gov/documents/2025/05/16/2025-08535> [hereinafter, “Section 504 DFR”].

² 60 Fed. Reg. 43,108, 43,111 (Aug. 18, 1995).

funding recipients' ability to address gender, race, and disability discrimination consistent with the purpose of Title IX, Title VI, and Section 504.³

II. The APA allows agencies to skip the notice-and-comment process only if they have “good cause” to do so. DOE does not.

The APA requires federal agencies issuing regulations to engage in notice-and-comment rulemaking⁴ to promote public input and transparency in the rulemaking process. The APA exempts agencies from the notice-and-comment process when there is “good cause” to forgo the process because it would be “impracticable, unnecessary, or contrary to the public interest.”⁵ An agency must explain why there is good cause to bypass the notice-and-comment process.⁶ Courts have held that the good cause exemption should be construed “narrowly,” typically accepting as a basis for good cause emergency situations or where delay would cause serious harm.⁷ Compliance with an executive order is not a sufficient justification to skirt the notice-and-comment rulemaking required by the APA.⁸ DFRs are only permitted to “expedit[e] the issuance of noncontroversial rules,” meaning an agency expects them to “elicit no significant adverse comment,” making the notice-and-comment process unnecessary.⁹ If an agency receives significant adverse comments, it can only proceed by complying with the APA’s requirements of considering and responding to public input, including by withdrawing a DFR and undertaking the full notice-and-comment process.¹⁰

By removing longstanding civil rights protections, DOE’s DFRs are inherently controversial and inappropriate for a DFR. Historically, DOE has used DFRs to make technical changes, like conforming

³ Commenters to the May notices emphasized the controversial nature of the DFRs by pointing out that the DFRs would strip away crucial protections against gender, race, and disability discrimination, which undermines the purpose of Title IX, Title VI, and Section 504. Democracy Forward Comment, Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (June 16, 2025) (repealing the “acknowledgement that recipients . . . may engage in affirmative action to overcome the effects of conditions that resulted in limited participation by persons of a particular sex” targets “longstanding civil rights protections that were adopted to effectuate Title IX”); Nat’l Women’s Law Ctr. Comment, Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (June 16, 2025) (“eliminat[ing] DOE’s longstanding ability to address disparate impact discrimination” “remove[s] a well-established tool to effectuate [Title VI] and “will lead to increased inequality in colleges and universities, small businesses, state governments, and other entities and employers”); Disability Rights Education and Defense Fund Comment, New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities (June 10, 2025) (rescinding the Section 504 regulations would “contradict the foundational principles of Section 504,” which include eliminating architectural barriers to accessibility).

⁴ 5 U.S.C. § 553.

⁵ *Id.* at § 553(b)(3)(B). See also Administrative Conference of the United States, Public Engagement in Agency Rulemaking Under the Good Cause Exemption (Dec. 17, 2024), <https://www.acus.gov/document/public-engagement-agency-rulemaking-under-good-cause-exemption>.

⁶ 5 U.S.C. § 553(b).

⁷ *N.C. Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 766, 767 (4th Cir. 2012).; *Jifry v. F.A.A.*, 370 F.3d 1174, 1179 (D.D.C. 2004). See also *Hawaii Helicopter Operators Ass’n v. F.A.A.*, 51 F.3d 212, 214 (9th Cir. 1995).

⁸ Indeed, federal courts have held that final agency actions implementing executive orders are subject to the APA’s requirements. See, e.g., *State of Nebraska v. Su*, 121 F.4th 1, 15–16 (9th Cir. 2024).

⁹ 60 Fed. Reg. 43,108, 43,111 (Aug. 18, 1995).

¹⁰ *Id.* See also *Sierra Club v. Pruitt*, 293 F. Supp. 3d 1050, 1057 (N.D. Cal. 2018); *Sw. Pennsylvania Growth All. v. Browner*, 144 F.3d 984, 987 (6th Cir. 1998); *Sierra Club v. U.S. E.P.A.*, 99 F.3d 1551, 1554 n.4 (10th Cir. 1996).

its federal claims collection with other agencies' standards.¹¹ This type of change bears no resemblance to DFRs rescinding civil rights regulations implementing major protections against gender, race, and disability discrimination that have existed for nearly 50 years,¹² especially as these regulations received hundreds of comments when initially proposed.¹³ DOE should not misuse the DFR process to eliminate civil rights protections without seeking the kind of public input and consideration required by the APA to understand the reliance interests that would be harmed by rescission of these longstanding protections.¹⁴

DOE does not assert in the Federal Register notices good cause for bypassing the notice-and-comment process. While DOE claims the targeted regulations are "unnecessary,"¹⁵ it provides no rationale for why notice-and-comment is unnecessary. And it could not. This is because, as the U.S. Supreme Court has stated, 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,"¹⁶ yet DOE seeks to rescind regulations that were originally adopted through notice-and-comment rulemaking¹⁷ through a different process. The fact is, there is no good cause to rescind these protections without allowing the public to fully weigh in about the reliance interests that would be harmed in losing these protections.

III. DOE did not comply with the review process required by Executive Order 12866.

DOE has also sidestepped the review process mandated by Executive Order 12866, which requires the Office of Information and Regulatory Affairs (OIRA) to review "significant regulatory actions."¹⁸ "Significant regulatory actions" are those 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."¹⁹ The DFRs warrant OIRA review because they are significant regulatory actions²⁰ for several reasons, including the glaring inconsistency that rescinding DOE's Section 504, Title VI, and Title IX regulations would create between its own regulations and numerous other agencies' regulations

¹¹ Collection of Claims Owed the United States, 68 Fed. Reg. 48575, 48576 (Aug. 14, 2003).

¹² Commenters to the May notices underscored the DFRs' controversial nature by emphasizing how repealing the targeted provisions would undercut DOE funding recipients' ability to address gender, race, and disability discrimination consistent with the purpose of Title IX, Title VI, and Section 504. *See supra* note 3 and accompanying text.

¹³ Nondiscrimination in Federally Assisted Programs, 45 Fed. Reg. 40,514 (June 13, 1980). In fact, the DFRs received tens of thousands of comments. Title IX DFR (9,293 comments submitted); Title VI and Section 504 DFR (19,421 comments submitted); Section 504 DFR (20,711 comments submitted).

¹⁴ Indeed, the U.S. Supreme Court has held that when reversing course with a policy change, an agency "must" "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020). The notice-and-comment process can be crucial to helping an agency understand reliance interests impacted such that whatever final action it takes is supported by reasoned decision-making.

¹⁵ *See* Title VI DFR; Title IX DFR; Section 504 DFR.

¹⁶ *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015).

¹⁷ Nondiscrimination in Federally Assisted Programs, 43 Fed. Reg. 53,658 (Nov. 16, 1978) (notice of proposed rulemaking); Nondiscrimination in Federally Assisted Programs, 45 Fed. Reg. 40,514 (June 13, 1980) (final rule).

¹⁸ Exec. Order No. 12,866, § 6(a), 58 Fed. Reg. 190 (Oct. 4, 1993).

¹⁹ *Id.* at § 3(f).

²⁰ The DFRs are also significant regulatory action because rescinding longstanding civil rights protections through the DFR process is unprecedented and "[r]aise[s] novel legal or policy issues" about compliance with the APA.

containing the same provision.²¹ Moreover, similar rules by other agencies have been deemed “significant” and thus required OIRA review under Executive Order 12866.²²

IV. DOE received significant adverse comments, so it cannot lawfully proceed and must withdraw the DFRs.

In response to the thousands of comments on each DFR, DOE acknowledged in three July Federal Register notices that it received significant adverse comments,²³ but did not withdraw the DFRs as it should have. In response to the staggering opposition to these DFRs, DOE simply said it would delay the DFRs’ effective date to September “to consider comments submitted.”²⁴ DOE then issued September Federal Register notices further delaying their effective dates.²⁵ DOE said it would delay the effective dates of the Title VI and Title IX DFRs to comply with the Trump administration’s April 2025 Executive Order, “Restoring Equality of Opportunity and Meritocracy,”²⁶ and said it was delaying the Section 504 DFR to “continue to consider comments.”²⁷ In both cases, delay does not cure the APA violation DOE already committed by proceeding with the DFRs. Given the thousands of comments submitted, DOE should withdraw the DFRs and, if it still wishes to proceed, initiate a notice-and-comment process. Proceeding with the DFRs despite receiving significant adverse comments is an abuse of the DFR process to expedite the removal of major civil rights protections without full consideration of public input.

²¹ Democracy Forward Comment, Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities, 9–10 (June 16, 2025) (“about 40 agencies adopted Title VI regulations prohibiting disparate-impact discrimination,” so rescinding DOE’s creates a “serious inconsistency,” within the meaning of “significant regulatory action”); NWLC Comment *supra* note 3, at 9 (because “over 20 federal agencies” have parallel Title IX provisions regarding schools remedying gender disparities, rescinding DOE’s would create a “major inconsistency” within the meaning of a significant regulatory action); DREDF Comment *supra* note 3, at 3 (“dozens of other agencies” adopted the accessibility rules for existing and new facilities the Section 504 DFRs would rescind).

²² This includes the proposed common Title IX regulations adopted by over 20 federal agencies, which includes a provision parallel to the one DOE seeks to rescind permitting funding recipients to address gender disparities in their educational programs. 65 Fed. Reg. 52,858, 52,864 (Aug. 30, 2000) (“The participating agencies have determined that this rule is a ‘significant regulatory action’ under Executive Order 12866, section 3(f) . . . Pursuant to Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.”).

²³ Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 90 Fed. Reg. 31,141 (July 14, 2025), <https://www.federalregister.gov/documents/2025/07/14/2025-13133>; Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions), 90 Fed. Reg. 31,140 (July 14, 2025), <https://www.federalregister.gov/documents/2025/07/14/2025-13138>; Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities, 90 Fed. Reg. 31,140 (July 14, 2025), <https://www.federalregister.gov/documents/2025/07/14/2025-13128> [collectively, “July DFR Notices”].

²⁴ July DFR Notices.

²⁵ Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 90 Fed. Reg. 43,540 (Sept. 11, 2025), <https://www.federalregister.gov/documents/2025/09/10/2025-17428> [hereinafter, “September Title IX DFR Notice”]; Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions), 90 Fed. Reg. 43,539 (Sept. 11, 2025), <https://www.federalregister.gov/documents/2025/09/10/2025-17427> [hereinafter, “September Title VI DFR Notice”]; Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities, 90 Fed. Reg. 43,907 (Sept. 11, 2025), <https://www.federalregister.gov/documents/2025/09/11/2025-17517> [hereinafter, “September Section 504 DFR Notice”] [collectively, “September DFR Notices”].

²⁶ September Title VI DFR Notice; September Title IX DFR Notice. Further, as stated above, compliance with an executive order is insufficient to justify skirting the APA’s requirements. *See supra* note 8 and accompanying text.

²⁷ September Section 504 Notice.

V. Conclusion

DOE sidestepped the process required by the APA to obtain public input on major regulatory changes. We urge DOE to meet with Bazelon, DREDF, LDF, and NWLC to discuss further our concerns about its misuse of the DFR process, in addition to the substance of the detrimental changes to Section 504, Title VI, and Title IX protections the DFRs threaten. If you have questions about this letter, please reach out to Hunter Iannucci, Counsel at the National Women's Law Center (hiannucci@nwlc.org) and Amalea Smirniotopoulos, Senior Policy Counsel and Co-Manager of the Equal Protection Initiative at LDF (asmirniotopoulos@naacpldf.org).

Thank you for your consideration.

Sincerely,

The National Women's Law Center (NWLC)
The Legal Defense Fund (LDF)
The Bazelon Center for Mental Health
Disability Rights Education and Defense Fund (DREDF)
American Civil Liberties Union
Asian Americans Advancing Justice - AAJC
Center for Public Representation
Democracy Forward
Justice in Aging
The Leadership Conference for Civil and Human Rights
Lawyers' Committee for Civil Rights Under Law
National Health Law Program
National Disability Rights Network

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