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Submitted via www.regulations.gov under [DOE-HQ-2025-0016](#)

June 16, 2025

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:

Equal Rights Advocates (ERA) submits this **significant adverse comment** in strong opposition to the direct final rule (DFR), “Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance.”¹

ERA is a national non-profit legal organization advocating for gender justice in schools, workplaces, and other spheres. Since our founding in 1974, ERA has led efforts to combat sex discrimination and advance gender equality by litigating high-impact cases, engaging in policy reform and legislative advocacy campaigns, conducting community education and outreach, and providing free legal assistance to individuals experiencing unfair treatment at work and in school through our national Advice & Counseling program. ERA has filed numerous suits and appeared as amicus curiae in hundreds of cases to defend and enforce gender equity civil rights at work and at school in state and federal courts, including before the United States Supreme Court. ERA has practiced Title IX law since the organization’s inception in 1974—shortly after Title IX’s codification in 1972—including as amicus in seminal Title IX cases that established the application and contours of this essential education civil right.² ERA has also appeared as a plaintiff organization in Title IX cases clarifying and asserting the underlying purpose and protections of Title IX.³

Even now, more than fifty years after the promulgation of Title IX, women and girls nationwide continue to be denied equal athletic opportunities in schools. The regulation DOE seeks to rescind, 10 C.F.R. § 1042.450(b), helps address this inequity by mandating that all students—especially women and

¹ Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance, 90 Fed. Reg. 20786 (May 16, 2025), <https://www.federalregister.gov/documents/2025/05/16/2025-08557/nondiscrimination-on-the-basis-of-sex-in-sports-programs-arising-out-of-federal-financial-assistance> [hereinafter “Title IX DFR”].

² See, e.g., *Alexander v. Yale University*, 631 F. 2d 178 (2d Cir. 1980) (Equal Rights Advocates as amici curiae).

³ See, e.g., *Victim Rights Law Center, et al. v. Cardona*, 552 F. Supp. 3d 104, 134 (D. Mass. 2021).

girls—be provided with the same opportunities to play non-contact sports (such as tennis, swimming, or running) as men and boys. Specifically, if a sex-segregated sports team is only offered to members of one sex and athletic opportunities for the excluded sex (typically women and girls) have previously been limited, a school must allow members of the excluded sex to try out for the available team unless the sport is a contact sport. This is a right afforded to all under Title IX regardless of sex. By rescinding 10 C.F.R. § 1042.450(b), this DFR could effectively permit schools to entirely exclude women and girls from non-contact sports by only offering a team for men or boys, a result that clearly runs contrary to the very legislative purpose of Title IX.

Throughout its history, including over the last decade, ERA has directly represented students in both administrative proceedings and litigation stemming from unequal athletic opportunities.⁴ In this capacity, we have seen firsthand both the tremendous benefits of athletic participation for women and girls and the rampant discrimination that still persists in spite of Title IX’s promise and protections. Data from the Equity in Athletics Disclosure Act reveals that over 90% of colleges and universities fail to meet current Title IX requirements and continue to discriminate against women’s opportunities in sports.⁵ Post-secondary institutions would need to provide an additional 225,568 sports opportunities to women in order to match the same proportion of opportunities that are offered to men.⁶ Schools can and should continue to be held responsible for combatting discrimination in sports and increasing athletic opportunities for women and girls, including by providing all athletes with the opportunity to play their sport of choice. This DFR is counter-productive, runs contrary to the legislative intent of Title IX, and is significantly substantive and based on deeply flawed premises and conclusory statements about “differences between the sexes” the Department erroneously dismisses as “uncontroverted reality.”⁷

That makes this DFR an unlawful and inappropriate use of the DFR mechanism. DFRs can be proposed only to make routine or “noncontroversial” changes to federal regulations to expedite the rulemaking process. Here, DOE fails to meet this standard, as the changes in the DFR would curtail substantive civil rights of women and girls to access equal athletic opportunities, thus undermining the spirit and purpose of Title IX.

For these reasons, **Equal Rights Advocates urges 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.⁸ This DFR is neither routine nor uncontroversial: in fact, rescinding this civil rights provision would result in significant harm to students by robbing them of legally protected opportunities

⁴ See e.g. *Mansourian v. Bd. of Regents of Univ. of California at Davis*, 816 F. Supp. 2d 869 (E.D. Cal. 2011); Jennifer Reisch, *Cal Women’s Field Hockey Team Gets a Field of Their Own*, Equal Rts. Advoc. (Feb. 3, 2016), <https://www.equalrights.org/news/cal-womens-field-hockey-team-gets-a-field-of-their-own/>.

⁵ *Schools Are Increasing The Gaps Between Men’s and Women’s Sports Opportunities*, Champion Women (July 17, 2023), <https://titleixschools.com/2023/07/17/gender-gap/>.

⁶ *Id.*

⁷ 90 Fed. Reg. 20786 (May 16, 2025), *Supra* at FN 1, adopting quoted language from E.O. 14201.

⁸ Congressional Research Service, *Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations and Pages in the Federal Register* (Sept. 3, 2019).

rules to implement and enforce Title IX.¹⁸ However, it is ERA's understanding that the DOE failed to obtain the Attorney General's or the Assistant Attorney General's review and approval of this DFR.¹⁹

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."²⁰ A significant regulatory action means "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."²¹

This DFR is a significant regulatory action.²² By permitting schools to exclude women and girls from athletic opportunities, this regulatory action would have a direct impact on the educational experience and, ultimately, the lifetime earnings and financial well-being of millions of women and girls.²³ This regulatory action 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 and its legislative history and legislative intent, *raising novel issues* and policy concerns about equity for women and girls in education.

It is alarming for the Department of Energy to seek to make 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.

In including athletic participation in the protections of Title IX, Congress recognized that sports are not merely extracurricular activities: they are a crucial part of a student's education. By removing a right that would provide more opportunities for women and girls to play, this DNR would harm the very students Title IX is designed to protect. Participation in sports is associated with numerous academic and non-academic benefits, including higher grades and scores on standardized tests, increased graduation rates, lower rates of depression, and higher levels of self-esteem.²⁴ Accordingly, requiring schools to provide athletic opportunities to students by permitting them to try out for a team otherwise

¹⁸ Exec. Order No. 12250, § 1-101

¹⁹ 20 U.S.C. § 1682; U.S. Dep't of Just., Regulatory Clearance Role Under Executive Order 12250 Infographic (Apr. 2018), available at <https://www.justice.gov/crt/page/file/1366476/dl?inline>.

²⁰ Exec. Order No. 12866, 58 Fed. Reg. 190 (Oct. 4, 1993).

²¹ *Id.* at § 3(f).

²² *Id.* at § 6. 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.

²³ Nat'l Coalition for Women and Girls in Education, *Title IX at 45: Advancing Opportunity through Equity in Education*, 42 (2017), <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>. ("The lessons of teamwork, leadership, and confidence that girls and women gain from participating in athletics can help them after graduation as well as during school. A whopping 94% of female business executives played sports, with the majority saying that lessons learned on the playing field contributed to their success. Former female athletes also earn an average of 7% more in annual wages than their non-athlete peers.").

²⁴ Nat'l Coalition for Women and Girls in Education, *supra* note 36, at 41–42; Stacy M. Warner et al., *Examining Sense of Community in Sport: Developing the Multidimensional 'SCS' Scale*, 27 J. of Sport Management 349, 349–50 (2013).

unavailable to them is one element of ensuring all students receive the full benefits of an education. This is especially important for women and girls, who face pervasive discrimination and inequity in sports.

Although DOE attempts to frame the rescission of Section 1042.450 as part of a larger effort to promote “fairness” and “safety” for women and girls in sports through a targeted hunting and affirmative government-sponsored harassment of transgender athletes and the transgender community in general, this agency action would in fact have the opposite effect.²⁵ The DFR asserts that this regulatory change is necessary because the current rule “ignores differences between the sexes” and seeks to align the rule with Executive Order 14201, an E.O. which does not have the force and effect of law and which unlawfully discriminates against transgender women and girls by attempting to ban them from playing on women’s and girls’ sports teams.²⁶

However, rescinding Section 1042.450 will take athletic opportunities *away* from **all** women and girls, cisgender and transgender. Given that only 0.5% of American adults and 1.4% of American youth identify as transgender, solely by the numbers, more cisgender athletes will be negatively impacted by this proposed erasure of a long-standing regulatory protection, undermining any argument that this change is for the benefit of women and girls or “Keep[s] Men Out of Women’s Sports.”²⁷ Trans sports bans in general also reinforce the very stereotypes that have always been used to exclude female athletes and that Title IX was meant to combat: that women are weak and delicate, unable to seriously compete, while men are strong and athletic.

These improper efforts do not provide more opportunities for girls and women to play sports—as Section 1042.450 does—nor do they attempt to mitigate any of the discrimination or inequities that harm female athletes most. Ultimately, this DFR has nothing to do with protecting female athletes; it is a way of using transgender students as a pretext for subjugating all women and girls to narrowly defined, archaic, oppressive, restrictive gender roles which are highly controversial in the public discourse and contrary to the public interest.

III. Conclusion

Rescinding 10 C.F.R. § 1042.450 via a Direct Final Rule is an unlawful action that would do nothing to support female athletes. Quite to the contrary, eliminating this regulation will in fact exacerbate barriers to play for all female athletes. **Equal Rights Advocates urges the Department to withdraw this Direct Final Rule.**

If you have any questions regarding this adverse comment, please email kohara@equalrights.org.

Respectfully submitted,

²⁵ Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

²⁶ Nat’l Women’s Law Center, *Fulfilling Title IX’s Promise: Let Transgender and Intersex Students Play* (June 2022), https://nwlc.org/wp-content/uploads/2019/09/NWLC_Trans50th_FactSheet.pdf. (“Title IX prohibits sex discrimination, which includes discrimination on the basis of transgender or intersex status. In its 2020 ruling in *Bostock v. Clayton County*, an employment discrimination case, the Supreme Court affirmed that discrimination on the basis of a person’s being transgender is ‘inherently’ a form of sex discrimination. Federal courts have recognized that both Title IX and the U.S. Constitution afford transgender students, including athletes, protection against sex-based discrimination.”)

²⁷ Jody L. Herman et. al., *How Many Adults and Youth Identify as Transgender in the United States?*, UCLA School of Law Williams Institute (June 2022), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.



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