



June 16, 2025

Submitted via Regulations.gov

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: DOE-HQ-2025-0015; Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities.

Dear Secretary Wright:

On behalf of the more than three million members of the National Education Association (NEA), I am writing in opposition of the recently published direct final rule (DFR), “Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities.” The NEA strives to ensure spaces are built with inclusivity and accessibility in mind. Our members are acutely aware of the challenges accessibility barriers place on students and educators alike. As written, Section 504 provides critical protections for qualified individuals from discrimination based on their disability. When people reference accessibility for students with disabilities (SWDs), they often think about the physical aspect of accessibility. The federal laws mandate that public school buildings and school buses be accessible for SWDs. U.S. states must adhere to this law. The proposed rules are unlawful. “Direct final rules” must be routine or noncontroversial. Here, the proposed changes are neither. Instead, the proposals would delete foundational provisions implementing Section 504 in contradiction of Congress’s clear understanding of the law.

This is a **significant adverse comment** opposing the direct final rules at Docket Numbers DOE-HQ-2025-0015 and DOE-HQ-2025-0024. The proposed rules would rescind critical portions of the Department of Energy (DOE)’s regulations implementing Section 504 of the Rehabilitation Act. Number 2025-0015 would rescind 10 C.F.R. § 1040.73, which requires recipients to ensure that new construction and alteration is fully accessible to people with disabilities. Number 2025-0024 would rescind portions of DOE’s program access rule for existing facilities at 10 C.F.R. § 1040.72(c) & (d), including the requirement to make a transition plan to eliminate access barriers in these existing facilities.

“[E]limination of architectural barriers was one of the central aims of the [Rehabilitation] Act.” *Alexander v. Choate*, 469 U.S. 287, 297 (1985). The requirement that newly constructed and altered

facilities be fully accessible to people with disabilities, as measured by applicable access standards, is central to this purpose. As important is the requirement that recipients of federal funds undertake careful accessibility planning to remove barriers in existing buildings.

The proposed rules would encourage new construction that is inaccessible to people with disabilities. They would also upend decades of reliance on established accessibility standards, creating conflicts with other statutory and regulatory standards.

The Proposed Rules Would Destroy Balanced Rulemaking Approved by Congress

The rules at issue date back to the coordination regulations adopted by the Department of Health, Education, and Welfare (HEW) in 1978. These rules were intended to establish minimum standards for implementing Section 504 across the federal government and were based on HEW's Final Rule for its own recipients finalized in 1977.

In adopting the 1977 and 1978 rules, HEW consulted extensively with Congress and engaged in multiple rounds of notice and public comment. The final rules carefully balanced the challenge of addressing barriers to people with disabilities in existing buildings with the opportunity for new construction and alterations to achieve greater accessibility going forward.

The compromise reached – which has been adopted by more than 80 federal agencies – was and still is to allow some flexibility with respect to existing buildings, while requiring new facilities to be fully accessible as measured by access standards. Over time, this approach advances Section 504's goal of reaching a more accessible society for people with disabilities.

Congress has repeatedly reviewed and approved the regulatory standards that DOE now seeks to delete, giving them the force of law. *Rail Corp. v. Darrone*, 465 U.S. 624, 635 nn.15 & 16 (1984). Federal courts have enforced the rules for decades. DOE may not lawfully eliminate foundational rules for the implementation of Section 504.

The Proposed Rules Would Undermine Access Standards and Create Conflicts

Compliance with access standards in new construction and alterations is critical to advancing the goals of Section 504. The deletion of the regulatory reference to the Uniform Federal Accessibility Standards as a measure of compliance would directly undermine the goals of Section 504. Access standards are key to making new construction and alterations accessible. Architects and contractors need a comprehensive set of design rules to ensure that new construction and alterations are built to be fully accessible to people with disabilities. Accessibility is often a matter of inches, making the difference between inclusion and exclusion of people with disabilities. Without access standards, we will never reach the fully inclusive society intended by Congress in enacting and reenacting Section 504.

The rules would also create conflicting enforcement standards: recipients of federal financial assistance from the DOE include many entities that receive funding from other federal departments and agencies, and/or that are subject to the requirements of the ADA. These recipients would be required to comply with access standards due to their other funding or under the ADA, but would remain open to liability under the general nondiscrimination language at section 1040.71.

The Rulemaking is Unlawful and Must Be Withdrawn

The careful compromise reached by agencies and Congress – to require that new construction and alteration be fully accessible, while imposing a more flexible standard for existing facilities – would be destroyed by the proposed “direct final rules.” Ensuring that new construction and alterations are fully accessible to people with disabilities is critical to advancing the goals of Section 504 of the Rehabilitation Act.

We urge DOE to withdraw this DFR. Thank you for considering this significant adverse comment. Please do not hesitate to contact me or Bianca Singh at BSingh@nea.org should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Daaiyah Bilal-Threats". The signature is written in a cursive style with a long horizontal line extending to the right.

Daaiyah Bilal-Threats
Senior Director, Education Policy and Implementation Center
National Education Association