



June 16, 2025

Filed to www.regulations.gov under [DOE-HQ-2025-0015](#) and [DOE-HQ-2025-0024](#)

Emailed to DOEGeneralCounsel@hq.doe.gov

Mr. David Taggart
Department of Energy
Office of the General Counsel
GC-1
1000 Independence Avenue SW
Washington, DC 20585

RE: RIN 1903-AA24, Docket Number [DOE-HQ-2025-0015](#) (New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities)

RIN 1903-AA20, Docket Number [DOE-HQ-2025-0024](#) (Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions))

Dear Mr. Taggart:

As co-chairs of the Consortium for Constituents with Disabilities (CCD) Rights Task Force, we submit these comments on the above-captioned Direct Final Rules. CCD is the largest coalition of national organizations advocating for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society. We write in strong opposition to these rules, which are wholly inappropriate for the Direct Final Rule process and would upend nearly fifty years of reliance on established standards, placing people with disabilities at risk of exclusion from federally funded programs and activities and creating chaos and confusion for regulated entities.

This is a **significant adverse comment** opposing the above-referenced Direct Final Rules. These rules would rescind key 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.

The Rules are Improperly Issued as Directly Final Rules

The Department has no authority under the Administrative Procedures Act to promulgate Direct Final Rules on these topics. “Direct final rules” must be routine or noncontroversial. These rules are neither. They withdraw provisions that have been in law and relied on for decades by people with disabilities and regulated entities alike. They would delete foundational provisions implementing Section 504 in contradiction of Congress’s clear understanding of the law.

“[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.

Deleting the accessibility standards that have been in place for decades would encourage new construction that is inaccessible to people with disabilities, and at the same time would sow chaos for regulated entities. The non-discrimination requirements of Section 504 would still apply to them even in the absence of regulatory standards, but they would now face uncertainty about how to comply and what standards would be sufficient to achieve compliance with the law. Indeed, it is possible that courts could hold them to more stringent standards than those deleted from the rules.

The Rules are Contrary to Congress’s Intent

Further, removing the provisions slated for elimination by the Direct Final Rules is contrary to Congress’s intent. These provisions mirror the Section 504 coordination regulations adopted by the Department of Health, Education, and Welfare (HEW) in 1978 as well as HEW’s own regulations adopted 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 reflected a compromise that is fundamental to Section 504 and the Americans with Disabilities Act: requiring new facilities to be fully accessible as measured by access standards while allowing more flexibility with respect to existing buildings. Similar rules were adopted by more than 80 agencies.

Congress has repeatedly reviewed and approved the regulatory standards that DOE now seeks to delete, giving them the force of law. *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 635 nn.15 & 16 (1984). Federal courts have enforced these rules for decades. Eliminating them would be contrary to Congress’s intent.

The Rules Contravene Executive Order 12250

The Direct Final Rules also conflict with Executive Order 12250. That Executive Order required HEW—and now the Department of Justice—to issue regulations necessary to coordinate the implementation of Section 504 across the federal government. It also required each executive agency responsible for implementing Section 504 to issue implementing regulations or guidance consistent with the coordination regulations. By deleting established standards that are required by the coordination regulations and mirrored in more than 80 agencies' regulations, the Direct Final Rules would undermine Executive Order 12250's purpose of ensuring consistent implementation of Section 504 across the federal government and flout its command that agencies act consistently with the coordination regulations.

The 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.

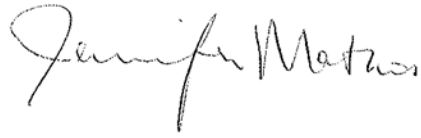
The rules would also create conflicting enforcement standards: recipients of federal financial assistance from the DOE include many entities that receive funding from other federal departments and agencies, and/or that are subject to the requirements of the ADA. These recipients would be required to 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.

The rulemaking is unlawful and must be withdrawn.

Sincerely,



Jennifer Mathis
Bazelon Center for Mental Health Law



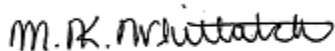
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/s/

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