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

Emailed to DOEGeneralCounsel@hq.doe.gov

Department of Energy
Office of Civil Rights and EEO
1000 Independence Avenue SW, Room 5B-168
Washington, DC 20585

Department of Energy
Office of Minority Economic Impact
1000 Independence Avenue SW
Washington DC 20585

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

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

To Whom It May Concern:

I am writing in my capacity as President & CEO of Lakeshore Foundation, a nationally respected disability health, wellness, nutrition, research and advocacy organization based in Birmingham, AL. Lakeshore serves directly nearly 4,000 individuals with disabilities and health conditions and veterans of all ages. These 4,000 members make 12,000 unique visits to Lakeshore monthly. In addition, we are home to three Paralympic Teams: Team USA Wheelchair Rugby (Silver Medalists at the Paris Paralympic Games), Boccia US and Para Powerlifting. I am writing also as a person with a disability, having been born without arms below my elbows and legs below my knees. I use four prostheses and powered mobility, and I need barrier-free, accessible environments to live as independently as possible.

It was my honor to testify before Congress in support of the Rehabilitation Act of 1973, under which Title V regulations such as these Section 504 regulations were promulgated. I also testified before Congress in support of the passage of the Americans with Disabilities Act

which re-established, as a matter of public policy, the necessity of universally accessible facilities and technologies. DOE's proposed action to eliminate its 504 regulations would inflict severe, irreparable harm to people with disabilities and create devastatingly negative harm to our inclusion in DOE-funded facilities and programs.

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.

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.

"[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.

The rulemaking is unlawful and must be withdrawn.

Sincerely,

John D. Kemp
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