

## Advocacy Comments on Title IX Proposed Rule

On July 12, 2022, the Department of Education proposed to amend the Nondiscrimination since Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations. The amendment would ban all forms of sex discrimination, including expanding the definition of sex discrimination to encompass discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity.<sup>1</sup> The proposal will no longer require live hearings for Title IX investigations and reverts the definition of sexual harassment back to “unwelcome sex-based conduct that creates a hostile environment by denying or limiting” a person’s ability to participate in a school’s education program or activity.<sup>2</sup> The current rule prohibits unwelcome sex-based misconduct only if it is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”

Advocacy is concerned that the Department has:

- Failed to include, define, and analyze economic impacts to other small entities that will be subject to Title IX, such as libraries, museums, and nonprofits.
- Relied on an alternative size standard to define small educational institutions that may not encompass all small entities not dominant in their industry.
- Inaccurately assessed the costs of the proposed rule on small educational institutions.

Advocacy recommends that the Department:

- Use the SBA size standards to analyze small entity impacts or provide additional detailed analysis supporting continuing the use of an enrollment-based standard.
- Publish for public comment an IRFA that contains significant alternatives and includes sufficient analyses to measure the regulatory impacts of the proposed rule on all affected small entities.

A complete copy of [Advocacy’s letter to the Department](#) is available. For more information, please contact Assistant Chief Counsel Rosalyn Steward at (202) 205-7013 or by email at [rosalyn.steward@sba.gov](mailto:rosalyn.steward@sba.gov).

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<sup>1</sup> Nondiscrimination based on Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 (proposed Jul. 12, 2022) (to be codified at 34 C.F.R. pt. 106).

<sup>2</sup> *Id.* at 41410.