



**Civil Rights & Diversity
Issuance System**



CRD – 002

Date: December 5, 2016

Office: Office of Civil Rights and Diversity

Subject: Prohibited Discrimination on the Bases of Sexual Orientation and Gender Identity

1. **PURPOSE.** This Issuance clarifies that the Department’s equal opportunity and nondiscrimination policy covers discrimination based on sexual orientation and gender identity. This does not represent a change in existing policy; rather, the inclusion of sexual orientation and gender identity simply articulates existing policy. Employees who believe their rights have been violated may file a complaint using the equal employment opportunity process.
2. **SCOPE.** The provisions of this Issuance apply to all bureaus, offices, and organizations in the Department, including the Offices of Inspectors General within the Department. The Issuance applies to all Treasury employees, including consultants, detailees, temporary employees, and interns (hereafter called employees), and contractors performing work for the Department of the Treasury, its offices, and bureaus, whenever the employee is working in a government-designated office, traveling, or working from home on behalf of the Department. The provisions of this Issuance shall not be construed to interfere with or impede the authorities or independence of the Treasury Inspector General, the Treasury Inspector General for Tax Administration, or the Special Inspector General for Troubled Asset Relief Program.
3. **POLICY.** It is the policy of the Department of the Treasury that discrimination on the basis of sex includes discrimination based on sexual orientation and gender identity.
4. **DEFINITIONS.** The following terms are defined to provide clarification for the purpose of this Issuance.
 - a. *Gender Identity* is the individual's internal sense of their gender. The way individuals express their gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender.

- b. *Gender Expression* refers to an individual's characteristics and behaviors, which include appearance, dress, mannerisms, speech patterns, and social interactions that are perceived as masculine or feminine.
- c. *Sexual Orientation* is an individual's emotional, romantic, and/or sexual attraction to others based on the gender of the other person; generally referred to with terms such as gay, lesbian, bisexual, or straight.
- d. *Transgender* is a term used to describe individuals with a gender identity that is different from the gender identity assigned to them at birth. Someone who was assigned the male sex at birth but who identifies as female is a transgender woman. Likewise, a person assigned the female sex at birth but who identifies as male is a transgender man. However, some individuals who appear to fit this definition do not identify themselves as transgender, and identify themselves simply as men or women. "Transgender" can also refer to gender non-conforming individuals whose gender identity or gender expression do not conform to gender stereotypes. This policy applies whether or not a particular individual self-identifies as transgender.
- e. *Transition* is a term used to refer to the process that some individuals go through as they move from living and working as one gender to the gender consistent with their gender identity. Every individual's transition is different. Some individuals may seek some form of medical treatment while other individuals will not pursue medical treatment for varying reasons. Regardless of medical status, all transitioning individuals are entitled to the same consideration as they transition in ways appropriate to their individual needs and should be treated with dignity and respect.

5. **RESPONSIBILITIES.**

a. Heads of Bureaus shall ensure that:

- 1) All employees receive a copy of this policy and any pertinent bureau policy which describes the Department's policy against discrimination or harassment of Department employees or applicants for employment or members of the public on the basis of their race, national origin, color, sex (including gender identity, sexual orientation, and pregnancy), religion, age, disability, parental status, or protected genetic information. Department employees, applicants for employment, and members of the public visiting a Department facility or participating in a Department event have the right, within professional expectations, to express their gender identity without fear of being harassed or otherwise subjected to adverse treatment.
- 2) Transitioning employees are treated with dignity and respect; this includes an expectation of:
 - a. **Confidentiality and Privacy:** An employee's transition should be treated with as much sensitivity and confidentiality as any other employee's health-related events. Employees in transition often want as little publicity about their transition as possible. They may be concerned about safety and employment issues if other people or employers become aware that they have transitioned. Moreover,

medical information received about individual employees is protected under the Privacy Act (5 U.S.C. 552a).

Managers and supervisors should advise employees not to spread information concerning the employee who is in transition: gossip and rumor-spreading in the workplace about gender identity are inappropriate. Other employees may be given only general information about the employee's transition; personal information about the employee should be considered confidential and should not be released without the employee's prior agreement. Appropriate questions regarding the employee's transition should be referred to the employee directly. Questions regarding a coworker's medical procedures, body, and sexuality are inappropriate for the workplace and should be addressed in the same manner as any other inappropriate comments in the workplace.

- b. **Proper Use of Names and Pronouns:** Managers, supervisors, and coworkers should use the name and pronouns appropriate to each employee's gender identity. Management should ensure that the correct name and pronoun are used in all communications with others regarding the employee as soon as the employee communicates the change in name and pronouns, even if the employee's legal name and gender marker have not yet been changed. Managers', supervisors', or coworkers' intentional misuse of an employee's name and pronouns, or reference to the employee as a gender with which they do not identify disrespects the transitioning employee, creates an unwelcoming work environment for all employees, and may result in a finding of discrimination. Such misuse may also breach the transitioning employee's privacy.
- c. **Necessary Recordkeeping Changes:** Consistent with the Privacy Act, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) are changed to show the employee's new name and gender in accordance with OPM's Guide to Personnel Recordkeeping. See 5 U.S.C. 552a(d). When an employee notifies a supervisor, Human Resource Specialist, or other responsible official that he or she intends to undergo a gender transition, the employee's supervisor and the Human Capital Office shall work with the employee to develop a transition plan for the organization, including all organizational components with which the employee interacts on a regular basis. See the attached Workplace Transition Plan Guidance which may be adapted to fit an individual or a specific location.
- d. **Sanitary and Related Facilities:** The Department of Labor's Occupational Safety and Health Administration (DOL/OSHA) guidelines require agencies to make access to adequate sanitary facilities as free as possible for all employees in order to avoid serious health consequences. Federal agencies occupying space under the jurisdiction, custody, or control of the General Service Administration must allow all individuals to use restroom facilities and related areas consistent with their gender identity. The Department adopts these same policies for all Department-occupied facilities. The self-identification of gender identity by any

individual is sufficient to establish which restroom or other single-sex facilities should be used. A transgender employee, applicant for employment, or a member of the public is allowed access to restrooms and (on the same basis as available to others) locker room facilities consistent with their gender identity. There is no requirement to have undergone or to provide proof of any particular medical procedure in order to have access to facilities designated for use by a particular gender. Under no circumstances may the Department require use of unisex, single-user restrooms or the use of facilities that are unsanitary, potentially unsafe, or located at an unreasonable distance, or that are inconsistent with the employee's gender identity.

- 3) **Bureau Policies are Updated:** Bureau policies regarding non-discrimination include prohibitions against discrimination based on sexual orientation and gender identity.

6. **AUTHORITIES.**

- a. The Civil Rights Act of 1964, as amended.
- b. Federal Management Regulation Bulletin 2016-B1, Nondiscrimination Clarification in the Federal Workplace, General Services Administration dated August 18, 2016.
- c. 5 U.S.C. 552a(d) – Records maintained on individuals.

7. **REFERENCES.**

- a. Treasury Secretary's Equal Opportunity Policy and Whistleblower Protection Rights Memorandum dated December 22, 2015.
- b. Human Capital Issuance System Chapter 900-008, Transmittal Number 08-005, "Procedures for Addressing Allegations of Discriminatory Harassment," dated June 10, 2008.
- d. Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, Office of Personnel Management dated May 27, 2011.

8. **OFFICE OF PRIMARY INTEREST.** Office of the Assistant Secretary for Management and Office of Civil Rights and Diversity.



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