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## Diversity, Equity, Inclusion, and Accessibility Issuance System



DEIA – 002

Date: 10/20/2022

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Office: Office of Diversity, Equity, Inclusion, and Accessibility<sup>1</sup>

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Subject: Equal Treatment Based on Gender Identity<sup>2</sup>

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1. **PURPOSE.** It is the policy of the Department of the Treasury (Department or Treasury) to treat all its employees with dignity and respect and to provide a workplace free from harassment and discrimination. The purpose of this guidance is to provide written instructions in response to questions which may arise when an employee is gender non-conforming or undergoes life/gender transitions while employed at Treasury.

Although each individual situation will have different considerations, the administrative processes will be similar. The guidance below is intended to provide instructions and timeframes for considerations which may arise.

This guidance, although intended to set expectations for Treasury offices and bureaus, is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Department, its components, its officers, employees, or agents, beyond those already existing under statute and EEOC regulation. In addition, this order is not intended to replace or impede any applicable discrimination complaint processes and does not alter the filing deadlines for invoking those processes. Treasury nondiscrimination policy covers discrimination based on sexual orientation and gender identity, as discrimination on the basis of sex. Employees who believe their rights

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<sup>1</sup> This issuance is also updated to reflect the current organizational structure (formerly Civil Rights and Diversity Issuance Program, CRD-002).

<sup>2</sup> Equal opportunity and nondiscrimination policies cover the basis of sex, which includes discrimination based on sexual orientation and gender identity. This Directive does not represent a change in existing policy; rather, it details Agency responsibility as it relates to the inclusion of gender identity in existing sex discrimination policy.

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 contractor employees 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 Offices of Inspector General.
3. **POLICY**. It is the policy of the Department of the Treasury that gender identity is a legally protected status, and the Department of the Treasury will not impede, restrict, or delay an employee's alignment/expression of their individual gender identity.
4. **DEFINITIONS**. The following terms are defined to provide clarification for the purpose of this Issuance.
  - a. **Cisgender** ("Cis") is the term for an individual whose gender identity matches the gender they were assigned at birth.
  - b. **Gender Identity** is an 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 culturally constructed stereotypes associated with a particular gender. In addition, gender identity can be fluid throughout an individual's life and expand notions of gender identity or gender expression beyond expected societal gender norms.
  - c. **Non-binary** is a term used to describe individuals whose gender identity are outside the binary gender identities of either "man" or "woman." There are additional terms used to describe the experience of a gender that is not male or female, including gender non-conforming, agender, and genderfluid, among others, with non-binary being the most common.
  - d. **Sex** is a set of biological attributes/characteristics including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy.
    - 1) **Intersex** is a general term used for a variety of scenarios in which a person is born with biological attributes that do not fit into the binary options of completely "male" or "female."
  - e. **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, including but not limited to gay, lesbian, bisexual, or straight.
  - f. **Transgender** is a term used to describe individuals with a gender identity that is different from the gender identity assigned to them at birth. For example, someone who was assigned the male gender at birth but who identifies as a woman is a transgender woman. Likewise, a person assigned the female gender at birth but who identifies as a man is a transgender man. Many individuals who appear to fit this definition identify simply as a man or a woman rather than as a "transgender man" or "transgender woman" because the distinction could imply that those are subsets of those gender identities. Non-binary people may or may not consider themselves transgender, although it is common to

include non-binary gender identities under the transgender umbrella. This policy applies whether or not a particular individual self-identifies as transgender.

- g. Transition is a term used to refer to the process some individuals go through as they undergo life changes which may include transitioning from living and working as one gender to the gender consistent with their gender identity. Every individual's transition is different and may or may not include name change, appearance change, pronoun change, and/or medical procedures. Transitions and life changes are not linear and may include any combination of physical, social, and medical processes. All transitioning individuals are entitled to the same consideration and privacy as they transition in ways appropriate to their individual needs and should be treated with dignity and respect, as is expected when interacting with all employees.

## 5. **RESPONSIBILITIES.**

- a. The Office of the Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer (DASHR CHCO) shall:
  - 1) Within *180 days* of the issuance of this guidance, create a complete list of Human Resources' records, documents, forms, and offices where an employee's primary name, legal name, and/or gender marker may be prospectively changed during or following a gender-affirmation process.<sup>3</sup> Specifically, the file should contain a concise list of the steps necessary and documents required to change an employee's name and/or gender marker within Treasury (e.g., email addresses, auto-complete contact lists and listservs, organization documents, personnel documents, financial documents, all communications sent to the employee from Treasury, and communications referencing the employee).<sup>4</sup>
- b. Heads of Bureaus shall:
  - 1) Ensure that all employees receive a copy of this policy and any pertinent bureau policy which describes the Department's policy on equal treatment based on sex, sexual orientation, and gender identity. 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) Provide applicable training, if necessary, to individuals involved with the process of assisting employees as they transition in the workforce.
  - 3) Within 60 days of the issuance of this guidance, select a senior member of the bureau's Human Resources Department to serve as the Point of Contact (POC) for transitioning employees within the bureau. The POC will serve as a resource, outside of the employee's chain of command, to aid with any obstacles that arise during the transitioning process.

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<sup>3</sup> "Gender Affirming" care, as defined by the Department of Health and Human Services, is a supportive form of healthcare that consists of an array of services including medical, surgical, mental health, or non-medical services for transgender and non-binary individuals.

<sup>4</sup> When possible, the employee's requested name and pronouns should be used in all documents/communications irrespective of the possible state or federal legal limitations in other areas. (E.g., If an employee resides in a state that does not provide the option to change sex designation on a birth certificate, all documents and communications that do not require a birth certificate for verification must reflect the employee's requests.).

- 4) Within 180 days of the issuance of this guidance, create a list of bureau-specific records, documents, forms, and offices where an employee's primary name, legal name, and gender marker may be prospectively changed during or following a gender-affirmation process to augment the list created by DASHR CHCO in Section V(A)(a). Specifically, the file should contain a concise list of the steps necessary, and documents required to change an employee's name and/or gender marker within the bureau (e.g., email addresses, auto-complete contact lists and listservs, organization documents, personnel documents, financial documents, all communications sent to the employee from the bureau, and communications referencing the employee).
- 5) Ensure that 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 personal or health-related events. The amount of public information released about the employee's transition is up to the individual employee, as concerns about safety may factor into the level of privacy requested by the employee. Moreover, medical information received about individual employees is protected under the Privacy Act (5 U.S.C. 552a) and other laws.
  - b) Proper Use of Names and Pronouns. Proper use of an employee's stated name and pronouns is required. After a reasonable adjustment period (i.e., 30 days), consistent misuse of pronouns (misgendering) or use of an incorrect or previously held name (deadnaming<sup>5</sup>) may add credence to a finding of discriminatory harassment on the basis of sex. No legal name change is required for the employee to request to be addressed by a new name.
  - c) Necessary Recordkeeping Changes. To the extent consistent with the employee's request, applicable laws, the Privacy Act, 5 U.S.C. 552a(d), and OPM's Guide to Personnel Recordkeeping, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) should be changed to show the employee's accurate name and sex/gender.
  - 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 available 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. See GSA Bulletin 2016-B1. 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 should be used. 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 single-user restrooms or the use of facilities that are unsanitary, potentially

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<sup>5</sup> "Deadnaming" occurs when an individual, intentionally, or not, uses someone's – birthname, given name, former name, old name - without their permission in any context.

unsafe, or located at an unreasonable distance, or that are inconsistent with the employee's gender identity.

(1) If a facility already includes a single user restroom, it is advisable to place a sign that says "unisex" on the door. This action can easily and preemptively address multiple situations that can arise during an employee's transition process. However, the employee must not be required to use the single user restroom.

c. Bureau Point of Contact (POC) shall:

- 1) Training. Take annual comprehensive training related to transgender and/or gender non-conforming employees and changes they may undergo in the workforce.
- 2) Transition Information. Maintain and, when necessary, update a folder containing all steps, points of contacts, and forms necessary to complete a workplace transition within your bureau.
- 3) Provide Guidance to Employees. When an employee requests to transition in the workforce, provide the steps and information necessary to the employee and their supervisor on the administrative process. When needed, seek guidance from internal and external stakeholders with expertise on the topic.

d. Managers shall:

- 1) Ensure that a transitioning employee's private information is kept confidential, and information is only given with the consent of the transitioning employee.
- 2) Wait for the employee's explicit request/consent before taking any action related to their transition.
- 3) Ensure that transitioning employees are treated with dignity and respect; this includes an expectation that discussions by supervisors or co-workers regarding a transitioning employee's medical procedures, body, and sexuality are addressed as being personal information and inappropriate to discuss, unless the topic is raised by the employee. Unsolicited discussion on these topics should be addressed in the same manner as any other unprofessional conduct/comments in the workplace.
- 4) When applicable, advise employees not to spread information concerning the employee who is in transition or going through life changes: gossip and rumor-spreading in the workplace about gender identity are inappropriate and can contribute to or lead to a hostile work environment.
- 5) Name and Pronoun. Ensure that employees use the correct name and pronoun for their colleague. Intentional or continuing misgendering or use of incorrect name cannot be tolerated and must be immediately addressed to avoid creating a hostile work environment for the transitioning employee. Manager intervention in these scenarios should be the same as required for all incidents of inappropriate conduct or harassment.
- 6) Record Keeping. Ensure that appropriate steps are initiated in a timely manner to make relevant adjustments, as lawfully permitted, to the employee's personnel record and contact information. The manager should use the process information collected by the bureau pursuant to this guidance.
- 7) Sick and Medical Leave. Allow employees undergoing affirming medical care to use leave under applicable regulations. Employees who are qualified under the Family

Medical Leave Act also may be entitled to take medical leave for transition related needs of themselves and their immediate family members.

- 8) Workplace Assignments and duties. If the workplace includes specific assignments or duties appropriately differentiated by gender, once the employee has made their gender known, the agency should treat that employee as the specified gender for purposes of all job assignments and duties.
- 9) Notification to Others. Collaborate with the transitioning employee regarding how they would like to notify their team members about changes related to their gender transition (i.e., pronoun change, name change). If requested by the employee, managers should participate in these notifications.
- 10) Timeliness. Take actions in a reasonable and timely manner. Unreasonable delay may be considered intentional, without sufficient justification.

e. Employees shall:

- 1) When necessary and at the time of the employee's choosing, notify the designated Human Resources POC, a member of their chain of command, or other responsible official if they need assistance with work-life changes, due to gender identity transition. There is no required timeline for the employee; however, if a timeline for management action is mutually agreed upon, unexpected changes to the transition plan or timeline should be communicated to the employee or responsible official as quickly as possible.
- 2) If a specific need for change arises (e.g., name change, email address change, etc.), make the specific request and provide explicit consent for each action you would like management to take.
- 3) If administrative changes are requested by the employee, work with their supervisor and/or others involved in the process to provide relevant information for the requested change.

## 6. AUTHORITIES.

- a. Title VII of Civil Rights Act of 1964, as amended, (Title VII) makes it illegal to discriminate against a person on the basis of race, color, religion, national origin, or sex, which includes sexual orientation and gender identity.
- b. Executive Order (EO) 11478, "Equal Employment Opportunity in the Federal Government," as amended by EO 12106, "Equal Employment Opportunity (EEO) Enforcement," and EO 13087, "Further Amendment to EO 11478, EEO in the Federal Government," prohibits discrimination and ensures equal opportunity for all persons, without regard to race, color, religion, sex, national origin, age, disability or sexual orientation.
- c. EO 13988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," orders each agency to take steps to prevent and combat discrimination on the basis of gender identity or sexual orientation, including ensuring the language in policies and guidance are compliant with the stated goals in the executive order.
- d. EO 14035, "Diversity, Equity, Inclusion and Accessibility in the Federal Workforce" addresses advancing equity for LGBTQ+ employees by improving equitable access to employee services and health/medical benefits, update employee identification standards,

expand availability of non-binary facilities and mitigate barriers of security clearance.

7. **REFERENCES.**

- a. Department of the Treasury Diversity, Equity, Inclusion, and Accessibility Strategic Plan FY 2022-2026.
- b. Government-wide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, November 23, 2021.
- c. EO 14035, “Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,” June 25, 2021.
- d. EO 13988, “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” January 25, 2021.
- e. Federal Management Regulation Bulletin 2016-B1, Nondiscrimination Clarification in the Federal Workplace, General Services Administration dated August 18, 2016.
- f. 5 U.S.C. 552a(d)- Records maintained on individuals.
- g. 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 Diversity, Equity, Inclusion, and Accessibility.

9. **POLICY REVIEW.** The provisions of this Issuance are subject to modifications by changes in pertinent statutes and EEOC regulations. The applicable provision or provisions shall be amended or superseded effective on the dates specified in any statutory or regulatory change, and DEIA shall issue interim guidance addressing the change as soon as practicable. This Issuance will be reviewed after five years.

/S/

Tonya Burton  
Acting Chief Diversity, Equity, Inclusion,  
and Accessibility Officer