



**Civil Rights & Diversity  
Issuance System**



CRD – 002

Date: April 8, 2021

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. Employees who believe their rights have been violated may file a complaint using the equal employment opportunity process. This clarification that discrimination based on sex includes discrimination based on sexual orientation and gender identity does not represent a change in existing policy; rather, the inclusion of sexual orientation and gender identity simply articulates existing policy.
2. **SCOPE.** This Issuance applies to all bureaus, offices, and organizations in the Department of the Treasury, with the exception of the Offices of Inspector General. 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 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 an individual expresses his or her gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender.

- b) *Gender Expression* is an individual's characteristics and behaviors such as appearance, dress, mannerisms, speech patterns, and social interactions that are perceived as masculine or feminine.
- c) *Sexual Orientation* is a person's emotional, romantic, and/or sexual attraction to other people based on the gender of the other person; generally referred to with terms such as gay, lesbian, bisexual, or straight.
- d) *Transgender*: Transgender individuals are people with a gender identity that is different from the sex 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. Some individuals who would fit this definition of transgender do not identify themselves as such, and identify simply as men and women, consistent with their gender identity. This policy applies whether or not a particular individual self-identifies as transgender.
- e) *Transition*: Some individuals will find it necessary to transition 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. Every individual's transition is different, and they all are entitled to the same consideration as they undertake the transition steps deemed appropriate for them and should all 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 significant life experiences. 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. Questions regarding the employee should be referred to the employee directly while noting that questions regarding a coworker's medical procedures, body, and sexuality are inappropriate.

- b) **Proper Use of Names and Pronouns:** Managers, supervisors, and coworkers should use the name and pronouns appropriate to the gender which the employee identifies as. Management should ensure that the correct name and pronoun are used in all employee records and in communications with others regarding the employee. Continued intentional misuse of the employee's new name and pronouns, and reference to the employee as a gender to which they do not identify by managers, supervisors, or coworkers is contrary to treating transitioning employees with dignity and respect, creates an unwelcoming work environment, and may result in a finding of discrimination. Such misuse may also breach the 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 regarding non-discrimination are updated to 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 (August 18, 2016), General Services Administration.
- 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 (December 22, 2015).
- b. Human Capital Issuance System Chapter 900-008, Transmittal Number 08-005, subject: Procedures for Addressing Allegations of Discriminatory Harassment (June 10, 2008).
- c. Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace (May 27, 2011), Office of Personnel Management.

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

9. **POLICY REVIEW.** The provisions of this Issuance are subject to modifications by changes in pertinent statutes and the U.S. Equal Employment Opportunity Commission (EEOC) regulations. The applicable provision or provisions shall be amended or superseded through interim guidance effective on the dates specified in any statutory or regulatory change. This Issuance will be reviewed after five years.

*Mariam G. Harvey*

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Mariam G. Harvey  
Director  
Office of Civil Rights and Diversity