

# OCR BULLETIN #1

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**Approved for Release on August 9, 2024**  
**Director for Office of Civil Rights**

## DEPARTMENT OF COMMERCE OFFICE OF CIVIL RIGHTS

### OFFICE OF CIVIL RIGHTS (OCR) BULLETIN #1, FISCAL YEAR 2024

**SUBJECT:** Gender Identity and Gender Expression Protections

**EFFECTIVE DATE:** August 9, 2024

**EXPIRATION DATE:** Effective until cancelled or superseded

**SUPERSEDES:** Not Applicable

**BACKGROUND:** This document sets forth the U.S. Department of Commerce (DOC or Department) policies prohibiting workplace discrimination on the basis of gender identity.

**PURPOSE:** This Office of Civil Rights (OCR) bulletin reiterates the Department's commitment to an inclusive environment free of discrimination for all employees, applicants, and all individuals working in an official capacity to support the Department regardless of gender identity or expression and addresses common requests for workplace assistance and/or changes deemed reasonable by the Department that may occur during a gender transition. The purpose of this bulletin is to help transitioning employees and supervisors navigate the gender transition process and to help deter potential violations of Title VII.

**COVERAGE:** The provisions of this bulletin are applicable to all DOC employees. This policy does not apply to non-Federal personnel.

#### DEFINITIONS

**Gender Identity** – An individual's internal sense of their gender - i.e., their knowledge that they are a man, a woman, some other gender, or that they do not identify with a gender. An individual's gender identity can be the same as or different from their sex assigned at birth.

**Gender Expression** – The way an individual presents or expresses their gender identity to others through appearance, dress, mannerisms, speech patterns, social interactions, and other characteristics or behaviors.

**Non-binary** – An adjective describing a person who does not identify exclusively as a man or a woman.

**Transgender** – An umbrella term that refers to an individual whose gender identity is different from the sex they were assigned at birth.

**Gender Transition** – The process some individuals go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This may include any number of social, legal, medical, spiritual, and other personal processes. Transgender people may choose to undergo some, all, or none of these processes.

**LGBTQ+** – An acronym that is often used as an umbrella term referring to “lesbian, gay, bisexual, transgender, and queer and/or questioning” individuals. The “+” sign recognizes the limitless sexual orientations and gender identities used by members of the community.

**Pronouns** – Terms used to refer to an individual when not using their name. Many pronouns, such as "he/him/his" and "she/her/hers," refer to a person while also implying a gender. Some individuals may not identify with pronouns that have an associated gender and may instead use non-gendered pronouns, such as "they/them/theirs," or they may not want to be referred to using a pronoun at all.

**Workplace Assistance** – Any action undertaken by a Department official to support the employee receiving the information, resources, and additional contact information of people necessary to simplify the workplace transition process.

**Transitioning Employee** – For the purposes of this document, references to the "transitioning employee" include all individuals who work in an official capacity to support the Department and request workplace assistance and/or changes related to gender identity or gender expression. Transitioning employees are not limited to those who are undergoing a “gender transition.”

## **ROLES AND RESPONSIBILITIES**

**Office of Civil Rights (OCR) and Large Bureau (NOAA, NIST, Census, PTO and ITA) EEO/DEIA Offices (EEO/DEIA)** – OCR and EEO/DEIA Offices will develop any additional Departmental policy and guidance and work in concert with Office of Human Resources Management, Enterprise Services or large Bureau Human Resources (HR) Offices, Office of the General Counsel (OGC), and supervisors to develop and provide training to employees; will help with the dissemination of relevant information to employees about this bulletin; and will serve as a resource on LGBTQ+ non-discriminatory practices. All references to EEO/DEIA Offices in this bulletin refer to the large Bureau offices unless otherwise indicated.

**Enterprise Services (ES) or large Bureau HR Office** – ES or the large Bureau HR Office and its staff will change or work with other internal and external stakeholders as practicable to change an individual’s personnel records and/or other records to more accurately reflect the name they use and gender identity in a timely manner, but no later than sixty (60) days of ES or

the large Bureau HR Office's receipt of notification and/or required documentation, as described in this bulletin.

**Coordinator** – An employee in OCR or at the large Bureau (NOAA, NIST, Census, PTO and ITA) EEO/DEIA Office who will work with the individual to develop a transition plan, act as a liaison between the individual and personnel in the various offices responsible for making changes, and follow-up regarding all changes to ensure the changes have been made (See [Appendix A – Sample Workplace Gender Transition Plan](#)).

**Office of Facilities and Environmental Quality (OFEQ)** – OFEQ or the large Bureau Facilities Office will monitor opportunities to expand the availability of all gender restrooms and facilities in Federally owned and leased workplaces.

**Supervisors** – Supervisors and managers have an obligation to work to prevent discrimination or harassment in the workplace because of an employee's gender identity, as with all other protected characteristics. A supervisor or manager must work cooperatively with the Transitioning Individual, the Coordinator designated by the EEO/DEIA Officer, and other personnel to implement changes requested by the Transitioning Individual and/or Coordinator.

**Transitioning Employee** – A transitioning employee is under no obligation to inform the Department of gender identity or gender expression changes unless they request workplace assistance and/or changes that require Department assistance. If workplace assistance and/or changes require documentation, the transitioning employee must provide the required documentation to initiate the requested changes.

## **CONFIDENTIALITY AND PRIVACY**

All transitioning employees should have control, to the extent possible, over when, with whom, and how much they share about their gender identity, gender expression, or sex characteristics (e.g., the sex a person was assigned at birth). All employees, applicants, and all individuals working in an official capacity to support the Department may choose to openly discuss their gender identity, gender expression, or sex characteristics or to keep those matters private consistent with applicable laws, regulations, and policies. An individual's medical information, among other information, is protected under the Privacy Act (5 U.S.C. 552a) and should be stored and disclosed only in accordance with the Privacy Act and other applicable laws.

Transitioning employees are encouraged to notify their supervisor or OCR and work with the assigned Coordinator to create a transition plan, as needed.

## **GENERAL GUIDANCE**

### Changing Records

Transitioning employees may wish to change their official personnel records and/or other records to reflect the employee's gender identity. Supervisors receiving such a request should refer the matter to ES or their servicing Bureau-level HR Office for further processing. ES/Service Human

Resources Office (SHRO) should contact the Coordinator to assist with processing the request. To ensure that these records are updated, the transitioning employee must provide the required documentation and cooperate with follow-up information requests by the Coordinator. The Coordinator will act as a liaison between the individual and personnel in the various offices responsible for changing the records. The Coordinator will follow up with the appropriate personnel to ensure that all records are changed in a timely manner.

Many internal records (e.g., email addresses, business cards, staff directories, intranet profiles) can be corrected to reflect the transitioning employee's name without the submission of official documentation in support of the request. When the transitioning employee requests that the Department change these types of records to reflect a change in name and/or gender, the Department will do so within sixty (60) days.

Legal name changes related to gender identity are handled in the same way as any other legal name change in an employee's Official Personnel Folder (OPF) and other employee records. If the transitioning employee seeks to change their legal name throughout their entire OPFS, including historical personnel records, instructions for doing so are set forth in [OPM's Guide to Personnel Recordkeeping](#).

Once the transitioning employee has provided official documentation as evidence of the name and/or gender change, the Department will make every reasonable attempt to initiate actions to make the change within approximately sixty (60) days.

If evidence of change of gender in the identity documents is not obtainable because of state or local requirements or any other reason, the transitioning employee's official personnel records may still be reconstructed with the transitioning employees' name and gender to reflect a change in gender identity based on a medical certification, in accordance with OPM's Guide to Personnel Recordkeeping.

When an individual requests that the Department change these types of records to reflect a change in name and/or gender, the Department will make every reasonable attempt to do so within approximately sixty (60) days.

OCR shall provide guidance for employees to include the pronouns they use in employee systems and profiles, including email signature blocks, employee directories, and employee profiles. Where gender markers are required by employee systems that are within the control of the agency the Department will take reasonable steps to ensure that they provide the option for: 1) non-binary gender markers and 2) an employee to update their gender markers and pronouns where applicable.

Any personnel involved in the record-changing process will ensure that steps are taken to maintain the transitioning employee's confidentiality during the process. Any personnel responsible for record changes will receive training on this bulletin and any other training the Directors of ES and OCR deem necessary.

The Coordinator, in coordination with ES or the transitioning employee's Bureau-level HR

Office, the Office of Chief Information Officer (OCIO), the Office of the Chief Financial Officer (OCFO), and any other applicable office(s), will develop and maintain a checklist of all records that can be changed, and the order in which they should be changed, during a name and/or gender change.

### Use of Name and Pronouns

All individuals should be addressed by and referred to with the name and personal pronouns they use, both verbally and in writing. If an individual is unsure of someone's pronouns, they can politely ask that person for their preferred pronouns.

Although some employees or other individuals may inadvertently make mistakes in name and pronoun usage after an individual's gender transition, continued use or intentional use of the incorrect name, pronoun, or gender of that transitioned individual could constitute misconduct and/or sex-based discrimination or harassment.

### Ensuring Access to Appropriate Facilities

Transitioning employees must be allowed to use facilities, such as restrooms and locker rooms, consistent with their gender identity. The Department will not condition this access on a transitioning employee having undergone or providing proof of any gender affirming surgeries or other medical procedures.

If a gender-neutral or single-stall restroom is available for general use in a Department facility, along with restrooms designated for use by a particular gender, any individual may use that gender-neutral or single-stall restroom. While use of a single-stall restroom might be incorporated into a transition plan at a transitioning individual's request, the Department will not require that a transitioning individual use such a restroom instead of the common restroom designated for the single sex which corresponds with their gender identity.

### Hiring and Promotion Process

An individual is not obligated to disclose their gender identity during the hiring and/or promotion process. Hiring or promotion documents (i.e., application materials) relating to a transitioned individual may indicate a name and/or gender that does not correspond with information gathered during background or reference checks. If this occurs, a supervisor or hiring official should not automatically assume that the inconsistency is a mistake or the result of deception or intentional misrepresentation. If a supervisor or hiring official has any questions or concerns regarding the inconsistency of names and/or gender on documentation, the official should contact ES or the large Bureau HR Office. ES or the large Bureau HR Office can obtain clarification, as needed, from the applicant. As with any other prohibited factors, at no time should a hiring official ask an applicant about their gender identity, gender expression, or sex characteristics, nor should any of the applicant's aforementioned information play any role in considering the applicant for a position or any other employment action.

### Dress and Appearance Standards

All employees are allowed to dress and present themselves consistent with their gender identity, as this aligns with the concept of gender expression. Transitioning employees may decide when to start dressing and presenting consistent with their gender identity. If any bureau, operating unit, line office, or organization within the Department has a dress code policy, that organization must evaluate and consider eliminating, where appropriate, gender-specific dress and appearance rules. Dress code policies are intended to outline the expectation of appropriate dress standards for a given facility, job assignment, or scope of duties and not limit an employee's ability to choose or maintain a gender-neutral or specific appearance.

### Reasonable Accommodation

If an employee seeks to request a reasonable accommodation to assist with the performance of the essential functions of their position, the requester should contact the servicing [Reasonable Accommodation Coordinator](#). This bulletin makes no legal determination as to whether any gender transition-related medical procedures or conditions meet the definition of a disability under the Rehabilitation Act.

### Sick and Medical Leave

Any transitioning employee receiving medical treatment as part of a gender transition may use sick or other leave in accordance with applicable regulations and policies. Similarly, if an employee wants to request the use of leave through the Family and Medical Leave Act (FMLA) for leave related to gender-affirming medical care or for leave related to the gender-affirming medical care of a family member, the employee must follow the applicable procedures to request FMLA leave. See the Department's [Annual Leave Policy](#) for more detailed information on requesting leave.

## **WORKPLACE TRANSITION PROCESS AND PLAN**

### Initiating the Workplace Transition Process

If an employee notifies a Department official (e.g., supervisor or HR specialist) that they intend to undergo a gender transition, and/or requests workplace assistance and/or changes, a Coordinator in OCR or a Bureau-level EEO/DEIA Office will be assigned as soon as possible, who shall work with the transitioning employee to develop a reasonable workplace transition plan. Requests to delay the development of the workplace transition plan will not be granted, except upon request of the transitioning employee.

An employee who is planning or requesting workplace assistance and/or changes related to a gender identity is encouraged but not required to provide the Department advance notice of at least sixty (60) business days so that a workplace transition plan and necessary logistics to implement the plan may be developed and executed within the employee's intended schedule.

### Contents of the Workplace Gender Transition Plan

Examples of items that the workplace gender transition plan might address, subject to the individual needs of the employee, include:

1. **NAME AND CONTACT INFORMATION OF THE TRANSITIONING EMPLOYEE AND THE ASSIGNED COORDINATOR** – Please provide the new name of the transitioning employee, gender and updated pronouns, as well as the designated Coordinator from OCR or the transitioning employee’s Bureau-level EEO/DEIA Office who will act as the central point of contact charged with working with the transitioning employee.
2. **THE WORKPLACE TRANSITION DATE** – This is the date on which workplace assistance and/or changes identified in the workplace transition plan will be implemented. In situations where a single date is not applicable, dates should be listed for each element in the transition plan that requires action. The employee will know best when this should occur as they will be able to determine all the relevant factors to be considered when choosing this date. An employee is not required to give the Department advance notice of when they will begin to work openly full-time in the workplace consistent with their gender identity or gender expression, and the employee may not know for certain. However, if they do not provide advance notice, they may risk receiving untimely assistance from the Coordinator.
3. **INFORMATION REGARDING RECORD CHANGES** – This may include: the required documentation the employee may need to provide for requested record changes; the date by which the employee should provide the documentation; the planned date by which the Department will change all of the employee’s official personnel records to reflect their name, pronouns, and gender; and a date by which the Coordinator will follow-up to ensure that all record changes have occurred. To the extent possible, the Department will coordinate record changes to coincide with the workplace transition date or soon thereafter so as not to reveal sensitive information prior to the workplace transition date.
4. **WHEN AND WHICH COLLEAGUES TO NOTIFY OF THE TRANSITION AND WHICH ELEMENTS OF THE TRANSITION TO CONVEY** – The employee may or may not want others to know about the transition or may want to share some elements of the transition but not others. The employee has discretion over whether, how, how much, and when to inform others, such as supervisors, managers, coworkers, and/or external parties (i.e., individuals who do not work for the Department but who may interact with the employee for work purposes). The employee may choose to tell others about the changes personally or may ask a Department supervisor to help communicate the information. Similarly, the employee may choose to tell supervisors, coworkers, and/or external parties individually, or as part of a group. If the employee decides that a supervisor should inform others about the transition, the Coordinator should be present or readily available to help answer any questions. The supervisor should only provide the information that the employee wishes to be shared and should share it in the manner requested.
5. **A WORKPLACE TRANSITION CHECKLIST** – The workplace transition plan will be supplemented with a workplace transition checklist to help ensure a smooth transition. Each bureau, operating unit, line office, and organization within the Department must

maintain a checklist specific to their needs. The transitioning employee and the Coordinator should use the workplace transition checklist to develop and/or implement the transition plan. This may include, for example, the items listed in [Appendix A – Sample Workplace Gender Transition Plan](#) and [Appendix B – Sample List of Official and Unofficial Workplace Records](#). The workplace transition plan should not contain any personal information about medical treatment.

### Implementing the Workplace Gender Transition Plan

The Coordinator will ensure that the Department implements the workplace transition plan in accordance with this bulletin in a timely manner.

The employee may raise concerns about planning and/or implementing a workplace transition plan, or about any other aspects of this bulletin, directly to their supervisor, OCR, their servicing EEO/DEIA Office and/or ES or their Bureau-level HR Office.

Any messaging used to communicate a workplace transition should be developed in coordination with, and approved by, the transitioning employee.

### Follow-Up

The Coordinator will follow-up with the transitioning employee and supervisor to ensure that any requests for workplace assistance and/or changes deemed reasonable by the Department were completed, that all records were changed, and that there are no further questions.

If the supervisor or manager receives information about potential discrimination or harassment, the supervisor or manager must contact the Director of OCR or the servicing EEO/DEIA Office and/or ES or their Bureau-level HR Office, consistent with the [Department's Anti-Harassment Procedures](#).

## **RESOURCES**

The following resources may also be helpful with respect to addressing workplace issues relating to gender identity and gender expression in the workplace:

**U.S. DEPARTMENT OF COMMERCE – POLICY STATEMENTS AND PROCEDURES**  
[EEO Policy Statement](#) and [Anti-Harassment Policy and Procedures](#)

**U.S. DEPARTMENT OF COMMERCE – OFFICE OF CIVIL RIGHTS**  
[Website](#), Phone: 202-482-0625, Email: [ocr@doc.gov](mailto:ocr@doc.gov)

**U.S. DEPARTMENT OF COMMERCE – EMPLOYEE ASSISTANCE PROGRAM**  
[Website](#), Help is available 24/7/365 by phone: 1-800-222-0364

**U.S. DEPARTMENT OF COMMERCE – LGBTQ+ EMPLOYEE RESOURCE GROUPS**  
[Commerce PRIDE](#), [Census Rainbow Alliance](#), [Lambda PTO](#), [NIST Pride](#), [NOAA Pride](#)



**U.S. OFFICE OF PERSONNEL MANAGEMENT**

[Addressing Sexual Orientation and Gender Identity Discrimination in federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities](#) and [Guidance Regarding Gender Identity and Inclusion in the Federal Workplace](#).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

[Processing Complaints Alleging Sexual Orientation or Gender Identity Discrimination by Federal Employees](#) and [Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity](#)

**REFERENCES:** Title VII of the Civil Rights Act of 1964: Affirming what the Equal Employment Opportunity Commission held several years earlier, the Supreme Court’s landmark decision in *Bostock v. Clayton County*, No. 17-1618 (S. Ct. June 15, 2020), held that Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination on the basis of sexual orientation or gender identity, with respect to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

## Appendix A – Sample Workplace Gender Transition Plan

The following is a list of commonly requested workplace assistance and/or changes that may be helpful to the transitioning employee and the coordinator when planning a workplace transition. Every transition is different. This list is not meant to be exhaustive, as transition plans are adaptable.

Date of initial notification:

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Target date for implementation of transition-related workplace assistance and/or changes (if target date changes or is delayed, it should be noted here):

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Name by which the employee would like to be referred:

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Pronouns (if applicable):

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Name of the management official(s) in the employee's direct line of supervision:

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Date the employee's management official(s) will be informed:

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Name of designee who will inform the employee's management official(s):

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Will the employee's coworkers be informed?

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Date the employee's coworkers will be informed and information to be conveyed:

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Name of designee who will inform the employee's coworkers:

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Will external parties be told of an employee's change in name, pronouns, and/or email address (if applicable)?

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Name of designee who will inform external parties:

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Date external parties will be informed:

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Is the employee requesting a name change for documents and/or records that require documentation? If so, they are changing their name to:

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Date the employee provided required documentation for the name change:

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Is the employee requesting a change in gender for documents and/or records that require documentation? If so, they would like to change their gender to:

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Date the employee provided required documentation for the change in gender:

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Date by which the Department plans to initiate actions to ensure that all records will be changed to reflect the employee's accurate name, personal pronouns, and gender, subject to any approval and processing necessary by OPM:

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Date by which the Coordinator will follow-up to ensure records were successfully changed (if the record have not been changed, the Coordinator will identify the reason for the delay):

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Transitioning Employee's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Coordinator's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix B – Sample List of Official and Unofficial Workplace Records

The following are common records that may be changed during a workplace transition. All of the below records may not apply to every employee, and most will require a change in name, but do not include gender. Offices involved in making name and/or gender changes in records are tasked with keeping a complete checklist of all records that need to be changed.

For additional information on how to submit these changes or for questions, please contact your Servicing Human Resources Office.

<b>Office of Human Resources Management</b>
Federal Employee Benefit Election Form: FEHB/Healthcare/SF2809 Notice of Change in Health Benefits Enrollment: FEHB/SF2810 Vision Enrollment Form Commerce Dental Enrollment Form COMMERCE Life Insurance Enrollment Form COMMERCE Life Insurance Beneficiary Form COMMERCE 24-Hour Personal Accident Enrollment Form COMMERCE 24-Hour Personal Accident Beneficiary Form Unpaid Compensation Beneficiary Form: SF 1152 FERS Designation of Beneficiary: SF 3102 CSRS Designation of Beneficiary: SF2808 Life Insurance Election: FEGLI/SF 2817 Federal Employees’ Group Life Insurance Program: FEGLI Beneficiary/SF 2823 Thrift Saving Plan Election Form: TSP/TSP-1 TSP Designation of Beneficiary: TSP-3 FEDVIP: Dental and Vision FLTCIP: Long Term Care FSA: Flexible Spending Account OWCP: Office of Workers’ Compensation Program Federal Reserve Bank Plan – Beneficiary Designation Federal Reserve Thrift Plan – Beneficiary Designation
<b>Office of Financial Management</b>
E2: Government Travel Access Government Travel Credit Card
<b>Office of Facilities and Environmental Quality</b>
Transit Benefit Application

**Office of the Chief Information Officer**

Federal Employee ID and PIV Credentials  
Email Address  
Contact List  
Staff Directory  
Voicemail

**Commerce Research Library and/or Bureau Library**

Database Accounts (i.e., Lexis, Westlaw)  
Library Book Check Out Account

**Local Office**

Request for Personnel Action SF-52  
Notification of Personnel Action SF-50  
Local Building Access Card  
Local Transit Benefits  
Office Name Plate  
Business Cards