

Congress of the United States

Washington, DC 20510

June 27, 2025

The Honorable Scott Bessent
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

RE: Agency Information Collection Activities; Proposed Collection; Comment Request; Equal Employment Opportunity (EEO) Complaint Forms; OMB Control Number: 1505-0262.

Dear Secretary Bessent:

We write to strongly oppose your proposal to remove gender identity and sexual orientation as bases for sex discrimination complaints in numerous Equal Employment Opportunity forms, including *Report of Counseling* 62-03.1, *Designation of Representative and Limited Power of Attorney* 62-03.2, *Agreement to Extend Counseling with Mediation* 62-03.4, *Individual Formal Complaint Form* 62-03.5, *Agreement to Extend Counseling without Mediation* 62-03.6, *Notice of Rights and Responsibilities* 62-03.7, *Notice of Right to File* 62-03.8, *Withdrawal* 62-03.9, *Class Complaint* 62-03.10, and *ADR Election Form* 62-03.11.

As you know, agency EEO programs play critical roles in ensuring federal employees who experience unlawful discrimination have recourse. Unlike public sector employees, federal employees cannot go to the Equal Employment Opportunity Commission (EEOC) directly to file a discrimination complaint. Instead, they must contact an EEO Counselor at their agency within 45 days of when the discrimination occurred. The EEOC only receives complaints from federal employees later in the process if they appeal an agency's decision following the agency's investigation or request a hearing before an Administrative Judge. In addition, employees must go through this administrative complaint process before they can file a lawsuit.

Your attempt to remove "gender identity" and "sexual orientation" as bases for sex discrimination complaints in numerous Equal Employment Opportunity (EEO) forms will create unnecessary hurdles to employees filing EEO complaints and undermine enforcement of federal employee's nondiscrimination protections.

More than a decade of precedents makes clear that federal employees are protected from gender identity and sexual orientation discrimination. More than 13 years ago, the EEOC held in *Macy v. Holder* that discrimination based on gender identity is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.¹ Three years later, EEOC held in *Baldwin v. Foxx* that discrimination based on sexual orientation is also a form of prohibited sex

¹ *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995.

discrimination under Title VII.² These interpretations were affirmed by the Supreme Court in *Bostock v. Clayton County*, where the Court also held that discrimination based on sexual orientation and gender identity are prohibited by Title VII.³ All of these decisions are binding on federal agencies, including the Department of the Treasury (“the Department”), meaning the Department cannot discriminate on the basis of gender identity or sexual orientation in employment.

Despite these decisions, discrimination continues to have a significant impact on LGBTQI+ Americans. A 2024 survey found that nearly 1 in 4 LGBTQI+ adults reported experiencing discrimination in the workplace.⁴ This includes 27% of transgender people and 27% of LGBTQI+ people of color.⁵

Discrimination also continues to be an issue at the Department of the Treasury. Treasury’s own data shows a 20.2% increase in EEO complaints filed from FY 2023, when there were 455 complaints filed, to FY 2024, when there were 547 complaints filed.⁶ Similarly, sex discrimination complaints increased from 148 to 181 over the same period.⁷ These figures suggest not only a persistent problem, but a growing one.

It is therefore critical that organizations, including federal agencies, have strong systems in place to both prevent and address discrimination. However, the proposed changes to these EEO forms appear to be an attempt to undermine these systems’ protections for LGBTQI+ employees.

It appears that these changes may be an attempt by the Department to dissuade employees from reporting gender identity and sexual orientation discrimination. Without forms clearly enumerating gender identity and sexual orientation as forms of sex discrimination, the average employee who experiences these forms of discrimination may see these forms and not realize that the discrimination they experienced was unlawful and something that they can report and seek recourse for. Employees should not have to know EEOC or Supreme Court precedent to know that the discrimination they faced on the basis of gender identity or sexual orientation is unlawful sex discrimination that can be reported. It is crucial that these forms continue to clearly identify gender identity and sexual orientation as forms of unlawful discrimination and bases for EEO complaints.

A more alarming view would be that the Department no longer plans to fulfill its legal obligations to investigate complaints of gender identity and sexual orientation and ensure its

² *Baldwin v. Foxx*, EEOC Appeal No. 0120133080, 2015 WL 4397641.

³ *Bostock v. Clayton Cty.*, 590 U.S. 644 (2020).

⁴ Caleb Smith and Haley Norris, *The LGBTQI+ Community Reported High Rates of Discrimination in 2024*, CAP (Mar. 12, 2025), <https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024/>.

⁵ *Id.*

⁶ United States Department of the Treasury No FEAR Act Annual Report Fiscal Year (FY) 2024, Dept. of Treasury Office of Civil Rights and EEO, <https://home.treasury.gov/system/files/136/FY24TreasuryNoFearReport.pdf>

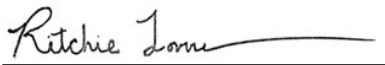
⁷ *Id.* Note, the Department’s No FEAR Act report does not break down these numbers to specify which of these complaints were based on sexual orientation or gender identity.

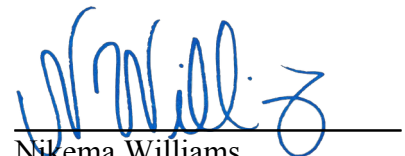
employees are working in an environment free from these forms of discrimination. We remind you that no Executive Order can overturn binding EEOC precedent on federal agencies or Supreme Court precedent. The Department must continue to properly investigate complaints of gender identity and sexual orientation and enforce employees' nondiscrimination protections.


Agencies should be making employment decisions based on merit. Nondiscrimination protections ensure that they are. It is critical that when an employee experiences unlawful discrimination, including on the basis of gender identity or sexual orientation, that they have recourse and that these instances of discrimination are properly investigated and addressed. The changes you propose to these forms will undermine efforts to encourage reporting and to address gender identity and sexual orientation discrimination.


For these reasons, we oppose your proposal to remove gender identity and sexual orientation as bases for sex discrimination complaints in numerous Equal Employment Opportunity forms and urge you to restore these forms so that they explicitly list both gender identity and sexual orientation as forms of sex discrimination.


Sincerely,

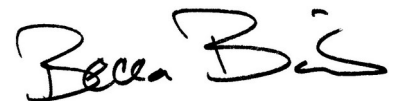

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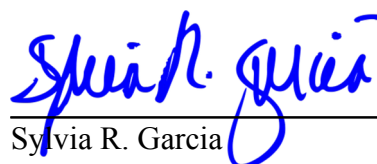
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