



June 27, 2025

Submitted via electronic mail

Treasury PRA Clearance Officer
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Re: *Notice of Information Collection; Request for Comment, 90 Fed.Reg. 17689 (April 28, 2025), OMB Control Number: 1505–026.*

To Whom It May Concern:

The National Employment Lawyers Association (NELA) respectfully submits the following comments concerning the Department of the Treasury’s *Notice of Information Collection; Request for Comment*, as published in the Federal Register at 90 Fed.Reg. 17689 (April 28, 2025).

NELA is the largest professional membership organization in the country comprised of lawyers who represent employees in labor, employment, wage and hour, and civil rights disputes. Our mission is to advance workers’ rights and serve lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have faced illegal treatment in the workplace in both the public and private sector. NELA has filed numerous *amicus curiae* briefs before the United States Supreme Court and other federal appellate courts regarding the proper interpretation of federal civil rights and worker protection laws, and comments regularly on relevant proposed rules. NELA also engages in legislative advocacy on behalf of workers throughout the United States. Many NELA members represent federal employees (including Treasury employees) in EEO complaints. NELA, therefore, has an interest in this information collection.

NELA opposes the proposed revisions to the Treasury’s EEO complaint forms to the extent that they seek the “removal of gender identity and sexual orientation as a basis for sex discrimination.” Contrary to the text of the Notice, these are not “Minor changes.” EEO complaint forms at the Agency are the initial stage of pleading for EEO complaints; later stages of litigation—whether it be after the filing of the Formal Complaint in the administrative EEO complaints process, or in *de novo* litigation in the courts—look to initial filings to determine which claims were administratively exhausted and which subsequent claims are “like or related” and thus ripe for possible amendment in the case later in litigation. Further, the framing of claims used by EEO Investigators in later record development depends in no small part on parsing differences in claims; for example, the topics for investigation in a religious disparate treatment claim are different from those in a denial of religious reasonable accommodation claim. Omission of “gender identity” and “sexual orientation” from the initial claims phrasing risks incomplete or misdirected investigations, prejudicing complainants. The Supreme Court itself has repeatedly found forms of

sex discrimination claims that are currently referred to as “gender identity” or “sexual orientation” claims to be actionable under Title VII, in a line of cases going back decades and deriving from earlier cases recognizing sex-stereotyping and same-sex sexual harassment as actionable discrimination claims. *See Bostock v. Clayton County, GA*, 590 U.S. 644 (2020) (citing *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998) and *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)). Indeed, just days ago (as of the date this Comment was submitted), the Supreme Court in a 9-0 decision unanimously upheld the viability of a “sexual orientation” Title VII sex claim where a heterosexual woman alleged that she suffered disparate treatment in favor of lesbians, with none of the Justices questioning the underlying legitimacy of the Title VII claim. *See Ames v. Ohio Dept. of Youth Services*, ___ U.S. ___, ___ S.Ct. ___, No. 23-1039 (June 5, 2025) (slip op.).¹ Irrespective of any changes in enforcement priorities by the present Administration, the courts still recognize “gender identity”- and “sexual orientation”-type sex discrimination claims as valid and actionable under Title VII. Accordingly, to ensure proper record development for those claims which may reach district court for *de novo* determination, it is important that the claim prompts in agencies’ precomplaint paperwork be detailed enough to allow for proper articulation of the claims for subsequent investigation and litigation, and for those reasons the Treasury should retain its questions prompts for “gender identity” and “sexual orientation” claims as forms of sex discrimination claims recognized by the courts in its precomplaint paperwork.

Thank you for your consideration. If you have questions or wish to discuss these matters, please contact Ashley Westby at awestby@nelahq.org or (202) 420-1123.

Sincerely yours,



Ashley Westby
Program Director
National Employment Lawyers Association

¹ The Supreme Court in a second, even more recent opinion, confirmed the continuing validity of *Bostock*, with no justices questioning the continuing force of *Bostock*—to the contrary, even Justice Alito opined, “I dissented in *Bostock*, but I accept the decision as a precedent that is entitled to the staunch protection we give statutory interpretation decisions.” *See U.S. v. Skrametti*, ___ U.S. ___, ___ S.Ct. ___, No. 23-477 (June 18, 2025) (slip op. at 71)(Alito, J., concurring).