

INFORMATION MEMO
DEPUTY SECRETARY XOCHITL TORRES SMALL
OCTOBER 18, 2023

Topic: USDA and Sexual Orientation Discrimination

From: USDA Sub-Working Group for the Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World

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Purpose: President Biden’s February 2021 [Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World](#) (Presidential Memorandum or PM) directs U.S. agencies engaged abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBTQI+ persons around the world. With this memo, we are providing information on

- 1) USDA Foreign Agricultural Service (FAS) incorporation of sexual orientation nondiscrimination protections into FAS terms and conditions (T&Cs) for grants and agreements and notices of funding opportunities (NOFOs) to international beneficiaries and
- 2) FAS investigating if there is a need for additional sexual orientation nondiscrimination training for those living, working, or traveling abroad.

Background: The PM calls on U.S. agencies engaged abroad to expand ongoing efforts to ensure that our engagement with governments, citizens, civil society, and the private sector promotes respect for the human rights of LGBTQI+ persons and combats discrimination. The PM directs the USDA—an agency engaged in foreign aid and trade and export development—to consider the impact of programs funded by the Federal Government on human rights, including the rights of LGBTQI+ persons, when making funding decisions, as appropriate and consistent with applicable law.

Discussion: In 2021, USDA formed a working group of employees to implement the PM. In August 2022, the working group issued a data call to USDA agencies for information on international programs relevant to the PM. The working group evaluated the responses and identified three agencies with international programs relevant to the PM: FAS, the Animal and Plant Health Inspection Service (APHIS), and the Agricultural Research Service (ARS).

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FAS distributes financial assistance in the form of grants and cooperative agreements to international beneficiaries through multiple foreign assistance and trade and export development

programs. (b) (5) (Deliberative Process Privilege - DPP)

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Other U.S. government agencies have or are pursuing similar updates to nondiscrimination protections for grants and contracts. In 2016, the U.S. Agency for International Development (USAID) completed updates to their [nondiscrimination policies for USAID-funded programs](#). Moreover, USAID provides guidance to other U.S. agencies pursuing similar policy changes. USDA is engaging with USAID, and other agencies as appropriate, throughout this process.

In addition, two USDA agencies employ Foreign Service Officers (FSOs) stationed abroad and/or other employees that engage directly with international governments, civil society, program participants, etc. (b) (5) (Deliberative Process Privilege - DPP)

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Next steps:

The USDA Working Group is exploring additional long-term projects to further promote the human rights of LGBTQ+ persons around the world and coalition building of like-minded nations. Possibilities include (b) (5) (Deliberative Process Privilege - DPP)

(b) (5) (Deliberative Process Privilege - DPP)

Implementing Executive Order 13988 at USDA
Preventing and Combating Discrimination on the Basis of
Gender Identity or Sexual Orientation
May 12, 2022

Overview:

The Biden Administration has enacted [Executive Order 13988](#) to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. It is also the policy of the Administration to address overlapping forms of discrimination. The goals and objectives of this action plan are interdependent with USDA's effort to advance equity through the implementation of the [Executive Order for Advancing Equity and Racial Justice Through the Federal Government](#), [Executive Order to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workplace](#) and the [National Strategy on Gender Equity and Equality](#).

The United States Department of Agriculture, dubbed “the People’s Department” by President Abraham Lincoln, is the Nation’s leader on food, agriculture, natural resources, rural development, nutrition, and related programs based on public policy, the best available science, and effective management. USDA, comprised of 29 agencies and offices with over 100,000 employees, serves the American people at 4,500 locations across the country and abroad. To ensure successful execution of our mission, the Department must create and nurture a workplace culture that consistently, intentionally, and systematically places equity at the center of our workforce. We depend on employees who can deliver their best work within a USDA that represents the diversity of our citizens and practices inclusion and accessibility so all employees can thrive in their contributions to mission delivery.

Objective:

Leveraging internal and external stakeholder input and ongoing meaningful engagement, programmatic data, and [USDA’s equity action plan](#) as required by EO13985, and ongoing efforts to strengthen our civil rights, the proposed goals and activities set forth in this document will serve as a blueprint for implementation of the provisions of Executive Order 13988 at the United States Department of Agriculture. This work will be tracked and reported as a stand-alone effort and integrated into the efforts led by our Director for Program Equity and Opportunity Strategy and Acting Chief Diversity and Inclusion Officer.

Goal(s):	Objective(s)/Description:	Team Lead(s):
<p>Goal 1: Create practical and scalable solutions to conduct policy review across mission areas, agencies, and staff offices and identify and implement additional proactive actions ensuring such actions account for overlapping forms of discrimination.</p>	<p>1. To create a framework for Agencies and the Department to identify policies, procedures, directives, actions, and regulations involving Title VII for review and update in accordance with Executive Order 13988 which directs:</p> <ul style="list-style-type: none"> a. The head of each agency shall, as soon as practicable and in consultation with the Attorney General, as appropriate, review all existing orders, regulations, guidance documents, policies, programs, or other agency actions (“agency actions”) that: (i) were promulgated or are administered by the agency under Title VII or any other statute or regulation that prohibits sex discrimination, including any that relate to the agency's own compliance with such statutes or regulations; and (ii) are or may be inconsistent with the policy set forth in section 1 of this order. b. The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 et seq.), consider whether to revise, suspend, or rescind such agency actions, or promulgate new agency actions, as necessary to fully implement statutes that prohibit sex discrimination and the policy set forth in section 1 of this order. <p>2. Create a framework for Agencies and the Department to identify additional proactive policies, procedures, directives, actions, and regulations in accordance with section 2 of Executive Order 13988 which directs:</p> <ul style="list-style-type: none"> a. The head of each agency shall, as soon as practicable, also consider whether there are additional actions that the agency should take to ensure that it is fully implementing the policy set forth in section 1 of this order. If an agency takes an action described in this subsection or subsection (b) of this section, it shall 	<p>(b) (6)</p>

seek to ensure that it is accounting for, and taking appropriate steps to combat, overlapping forms of discrimination, such as discrimination on the basis of race or disability.

- b. Within 100 days of the date of this order, the head of each agency shall develop, in consultation with the Attorney General, as appropriate, a plan to carry out actions that the agency has identified pursuant to subsections (b) and (c) of this section, as appropriate and consistent with applicable law.”

Action Items:

1. (b) (5) (Deliberative Process Privilege - DPP)
2. Affirm the LGBTQI+ Special Emphasis Program in any reviews of Departmental Regulation 4230-002 Special Emphasis Programs.
3. (b) (5) (Deliberative Process Privilege - DPP)
4. Coordinate with Food and Nutrition Service (FNS), in consultation with DOJ, on non-discrimination in FNS’s assisted programs clarifying that sex discrimination includes sexual orientation and gender identity, in order to remove barriers in and expand access to nutrition programs.

Timeline:

Current timeline is approximate and subject to change as USDA is in the project planning phase and assessing appropriate milestones and timeline in relation to project scope.

1. (b) (5) (Deliberative Process Privilege - DPP)
2. [REDACTED]
3. [REDACTED]

<p>Goal 2: Develop guidance and resources to support the implementation and integration of recommendations and actions throughout the organization.</p>	<ol style="list-style-type: none">1. To develop comprehensive education and reference materials that:<ol style="list-style-type: none">a. Raise awareness of LGBTQI+ experiences, contributions, and professional and workplace issues.b. Provide strategies and recommendations to help the USDA public profile and ensures the workplace as a welcoming, safe, and inclusive organization for all employees including LGBTQI+ employees.c. Provide strategies and recommendations to the ongoing programmatic equity efforts to ensure equity in the delivery of USDA programs and services.2. Develop a framework and guidance to support transitioning employees that contains the proper procedures and resources to facilitate a positive workplace transition experience.	<p>Team Leads: (b) (6)</p>
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<p>Action Items:</p> <ol style="list-style-type: none">1. (b) (5) (Deliberative Process Privilege - DPP)2. (b) (5) (Deliberative Process Privilege - DPP)3. Provide recommendations for LGBTQI+ recruitment ideas and initiatives.4. Guidance for the use of Gender Inclusive language in agency internal and external communications.5. (b) (5) (Deliberative Process Privilege - DPP)6. Develop guidance on the proactive use of pronouns in the workplace.<ol style="list-style-type: none">a. Update USDA Style guide for e-mail signatures and business cards to include and encourage pronoun use.7. (b) (5) (Deliberative Process Privilege - DPP)

8. **(b) (5) (Deliberative Process Privilege - DPP)**

Timeline:

Current timeline is approximate and subject to change as USDA is in the project planning phase and assessing appropriate milestones and timeline in relation to project scope.

1. **(b) (5) (Deliberative Process Privilege - DPP)**
2. **(b) (5) (Deliberative Process Privilege - DPP)**
3. **(b) (5) (Deliberative Process Privilege - DPP)** FY22-Q2 – Submitted 4/2/2022
4. **(b) (5) (Deliberative Process Privilege - DPP)**
5. **(b) (5) (Deliberative Process Privilege - DPP)** updated guide: <https://www.usda.gov/style-guide/writing-style#signature>
6. **(b) (5) (Deliberative Process Privilege - DPP)**
7. **(b) (5) (Deliberative Process Privilege - DPP)**

<p>Goal 3: Support USDA employees in helping create diverse, inclusive, equitable, and accessible outcomes for coworkers, customers, and other stakeholders through training, education, and professional learning opportunities.</p>	<ol style="list-style-type: none"> 1. In coordination with the Acting Chief Diversity and Inclusion Officer, OASCR, and OHRM, inform the development of a comprehensive portfolio of training and education offerings on Title VII protections and provisions as they relate to sexual orientation, gender identity, and gender expression. Training should range from general knowledge on what is and isn't considered discrimination under Title VII to audience specific training for HR professionals, Managers and Supervisors to address policy and regulatory changes mandated in Executive Order 13988. Additionally provide cultural competency education to employees at all levels of the organization to promote effectively working with LGBTQ+ identified coworkers, customers, and other stakeholders. 	<p>Team Leads: (b) (6)</p>
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Action Items:

1. Development and delivery of "Pronouns in the Workplace" communication and micro-training session from [REDACTED]

2. (b) (5) (Deliberative Process Privilege - DPP)

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- 7.

Timeline:

Current timeline is approximate and subject to change as USDA is in the project planning phase and assessing appropriate milestones and timeline in relation to project scope.

1. Pronouns in the Workplace training – June 2021 – Completed and in use

2. (b) (5) (Deliberative Process Privilege - DPP)

- 3.
- 4.
- 5.
- 6.

Sexual Orientation & Gender Identity (SOGI) Data Action Plan for the U.S. Department of Agriculture

The U.S. Department of Agriculture (USDA) provides leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on public policy, the best available science, and effective management. USDA is composed of 29 agencies and offices with nearly 100,000 employees who serve the American people at more than 4,500 locations across the country and abroad. USDA has a vision to provide economic opportunity through utilizing innovation, helping rural America to thrive; promoting agriculture production that better nourishes Americans while also helping feed others throughout the world; and preserving our Nation's natural resources through conservation, restored forests, improved watersheds, and healthy private working lands. USDA is committed to equity, civil rights, diversity, inclusion, and accessibility, rooted in our dedication to justice and equal opportunity for our employees and those we serve. For USDA, equity is central to the Department's mission and not an add-on or extra to our core mission and goals. Among our core commitments are to treat all people with courtesy and respect and to value the inherent dignity of each individual. USDA also seeks to end discrimination in all forms, wherever it exists, and to expand services and opportunities to underserved people and communities across the United States.¹

Answers to the following Learning Questions would support USDA's efforts to (1) identify and eliminate barriers impeding access to USDA programs and services for LGBTQI+ individuals; (2) improve USDA's ability to make evidence-informed and dignity-affirming decisions related to programs, policies, and operations; and (3) improve the ability of our Federal partners to make evidence-informed decisions related to their programs:

(b) (5) (Deliberative Process Privilege - DPP)



¹ [USDA Strategic Plan Fiscal Years 2022-2026](#), p. 3-4.

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Evidence-Building Activities

Barriers to participation arise under multiple conditions, occur in different forms, and grow out of a variety of causes. The capacity to mitigate barriers to equal access, however, depends on the availability of valid and reliable evidence related to USDA programs and services. While USDA has made progress in understanding and addressing inequitable access for some underserved groups and communities, very limited data is available to identify and develop strategies to mitigate barriers that impede members of the LGBTQI+ community. Given the challenges in building reliable and valid evidence in this area, USDA will use a graduated approach to building the evidence needed to inform decision-making.

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Evidence-Building Infrastructure

Evidence-building activities require resources and infrastructure. To support the evidence-building activities described above, USDA will assess the capacity to implement this Learning Agenda to its fullest extent, including by assessing whether and how the following are available, and if not, what additional resources are needed:

(b) (5) (Deliberative Process Privilege - DPP)



Evidence-Use Activities

Since the implementation of the Evidence Act of 2018, Federal agencies have escalated efforts to make evidence-based decisions.

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Monitoring Progress

(b) (5) (Deliberative Process Privilege - DPP)

Action Plan Team

The following individuals/offices provided leadership in the development of this Action Plan:

(b) (6)

The following individuals/offices provided subject matter expertise and/or support services in the development of this Action Plan:

(b) (6)