



## DEPARTMENT OF EDUCATION


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June 7, 2022

### MEMORANDUM

**TO:** Child and Adult Care Food Program (CACFP) Sponsors

**FROM:** Aimee F. Beam, MS, RD, LDN   
Education Associate, Nutrition Programs

**RE:** **CACFP 2022 Operational Memo #12**  
**Updated USDA Civil Rights Division Guidance, Nondiscrimination**  
**Statement, and And Justice for All Posters**

The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Civil Rights Division has issued several memorandums regarding recent updates to the complaint processing policy related to program complaints alleging discrimination on the basis of gender identity or sexual orientation in programs or activities receiving Federal financial assistance. The memorandums provide guidance that discrimination on the basis of sex in programs or activities receiving Federal financial assistance includes discrimination on the basis of sexual orientation and discrimination on the basis of gender identity. These changes impact the complaint processing policy as well as the USDA Nondiscrimination Statement (NDS) and the And Justice for All (AJFA) posters.

The Delaware Department of Education (DDOE) Nutrition Programs office will provide an updated Civil Rights Complaint Procedures template and Civil Rights Complaint Form template for use by School Food Authorities (SFAs) via operational memo in the near future.

Additionally, per the attached guidance, SFAs should update all documents, pamphlets, websites, etc. with the 2022 NDS as follows:

1. Websites must be updated within 90 days of the date of this memorandum;
2. Documents, pamphlets, brochures, etc., using 2015 NDS language must be updated when the current supply on hand is exhausted or by September 30, 2023; and
3. All new printing must use the 2022 NDS.

The updated NDS is as follows:

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**  
U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or
2. **fax:**  
(833) 256-1665 or (202) 690-7442; or
3. **email:**  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

The updated AJFA posters have been ordered by DDOE and will be distributed when received. However, per USDA, **AJFA posters currently posted must not be removed until replaced with the new poster.**

The above referenced memos are attached for your review. Please contact our office at (302) 857-3356 with any questions.

cc: Nutrition Team

Attachments: Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update;  
Questions and Answers Related to CRD 01-2022 Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update;  
Revised Nondiscrimination Statement and “And Justice for All” Posters; Timelines and Guidance for Implementation



Food and  
Nutrition  
Service

DATE: May 5, 2022

MEMO CODE: CRD 02-2022

Braddock  
Metro Center

SUBJECT: Questions and Answers Related to CRD 01-2022 Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update

1320  
Braddock  
Place  
Alexandria  
VA 22314

TO: Regional Directors  
All Food and Nutrition Service Programs  
All Regions

State Directors  
All Food and Nutrition Service Programs  
All State Agencies

<b>Issuing Agency/Office:</b>	FNS/Civil Rights Division
<b>Title of Document:</b>	Questions and Answers Related to Application of <i>Bostock v. Clayton County</i> to Program Discrimination Complaint Processing – Policy Update
<b>Document ID:</b>	Not Applicable
<b>Z-RIN:</b>	Not Applicable
<b>Date of Issuance:</b>	May 5, 2022
<b>Replaces:</b>	Not Applicable
<b>Summary:</b>	This memorandum provides clarification on questions related to the prohibitions against discrimination based on sex in all FNS programs found in Title IX of the Education Amendments of 1972; the Food and Nutrition Act of 2008, as amended, Supplemental Nutrition Assistance Program (SNAP) (7 USC § 2011 et seq.); and related implementing regulations prohibiting discrimination on the basis of gender identity and sexual orientation.

The Food and Nutrition Service (FNS), Civil Rights Division (CRD) is issuing this memorandum to provide clarification on questions related to CRD 01-2022 *Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update*, published on May 5, 2022.

FNS's interpretation of discrimination on the basis of sex in programs or activities receiving Federal financial assistance includes discrimination on the basis of sexual orientation and discrimination on the basis of gender identity. The following questions and answers were developed to assist State Agencies and program operators with the implementation of this Policy Update.



## Questions and Answers

### I. General

#### 1. What next steps must be taken by State Agencies and program operators?

State Agencies and program operators will have to update their program discrimination complaint processing procedures for allegations related to services and activities receiving federal financial assistance from the USDA to ensure discrimination complaints alleging sexual orientation and gender identity discrimination are processed as complaints of prohibited sex discrimination. Additionally, State Agencies and program operators will need to update their Nondiscrimination Statements and order new *And Justice for All* posters that reference gender identity and sexual orientation discrimination. The updated FNS Nondiscrimination Statement will be available in multiple languages at <https://www.fns.usda.gov/cr/fns-nondiscrimination-statement>. Additional guidance will be issued by FNS CRD specifically addressing these two topics.

#### 2. When should program operators and State Agencies update the Nondiscrimination Statement and the *And Justice for All* posters?

Although CRD 01-2022 *Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update* is effective immediately, additional guidance is forthcoming. We will work with State Agencies and program operators on the timing for updating documents and materials to include the updated Nondiscrimination Statement. Items that can be changed without further guidance should be updated as soon as possible (websites for example). Additional guidance for timelines and implementation will be provided in a separate memorandum.

#### 3. What should program operators and State Agencies do with old *And Justice for All* posters?

Currently, updated *And Justice for All* posters are in production and will be available in the coming months. State Agencies and program operators must continue to display the applicable version of the poster dated September 2019, until updated *And Justice for All* posters are ordered and received. Guidance on poster ordering and display is forthcoming.

**4. What if a State Agency or program operator does not currently have an *And Justice For All* poster displayed?**

Contact your Regional Civil Rights Officer for additional information and guidance.

**5. Who is my Regional Civil Rights Officer?**

See regional contact list at <https://www.fns.usda.gov/fns-regional-offices>

**6. How do you request a religious exemption with the U.S. Department of Agriculture?**

Under U.S. Department of Agriculture (USDA) regulation [7 CFR 15a.205](#), educational institutions and other entities may claim an exemption from the provisions of Title IX by submitting a written declaration to the Secretary of Agriculture identifying the provisions that conflict with a specific tenet of the religious organization.

USDA's Postal Service mailing address is:  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250

**7. Will a finding be issued for non-compliance with the updated *And Justice for All* poster and Nondiscrimination Statement?**

During the grace period, findings will not be issued if the State Agency is unable to display the updated *And Justice for All* poster and incorporate the Nondiscrimination Statement on documents and materials. Once the grace period(s) have expired for ordering and displaying posters and reprinting documents, a State agency or program operator must demonstrate efforts taken to comply with the guidance provided before a determination is made to issue a finding of noncompliance. Additional guidance on timelines and implementation will be provided in a separate memorandum.

Please note there will not be a grace period for accepting and processing discrimination complaints based on sexual orientation and gender identity in FNS programs.



Food and  
Nutrition  
Service

1320 Braddock Place  
Alexandria, VA  
22314-1649

**To:** Regional Directors  
All Child Nutrition (CN) and Supplemental Nutrition and Safety Programs<sup>1</sup> (SNAS)  
State Directors  
CN and SNAS  
All State Agencies

**Subject:** Revised Nondiscrimination Statement and “And Justice for All” Posters; Timelines and Guidance for Implementation

On May 5, 2022, the Food and Nutrition Service’s (FNS), Civil Rights Division, issued a memorandum on *Bostock v. Clayton County* and its application to USDA FNS Programs. The memorandum informed FNS program recipients that the prohibition of discrimination based on sex in Title IX and the Food and Nutrition Act includes gender identity and sexual orientation. The changes impact the USDA Nondiscrimination Statement (NDS) and the *And Justice for All* (AJFA) posters. Additional guidance is outlined below.

The revised USDA NDS includes updated language for all other FNS programs. New *And Justice for All* posters are in the design/printing phase and guidance on poster ordering is forthcoming. A timeline for distribution cannot be determined until printing commences.

### **Nondiscrimination Statement**

All documents, pamphlets, websites, etc. should be updated with the 2022 NDS as follows:

1. Websites must be updated within 90 days of the date of this memorandum.
2. Documents, pamphlets, brochures, etc., using 2015 NDS language must be updated when current supply on hand is exhausted or by September 30, 2023.
3. All new printing must use the 2022 NDS.

### **And Justice for All Posters**

Until the new posters are received, additional guidance is outlined below.

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<sup>1</sup> All other FNS nutrition assistance programs (Child and Adult Care Food Program, Commodity Supplemental Food Program, Food Distribution Programs, National School Lunch Program, School Breakfast Program, Summer Food Service Program, Seniors Farmers' Market Nutrition Program, Special Milk Program, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and WIC Farmers Market Nutrition Program). The Supplemental Nutrition Assistance Program and Food Distribution Program on Indian Reservations guidance is distributed in a separate memorandum.

1. State and local agencies may request the 2019 AJFA posters from their Regional Civil Rights Officer until their supply is exhausted. State agencies may distribute AJFA posters currently on hand to local agencies and subrecipients until new posters are received.
2. AJFA posters currently posted must not be removed until replaced with the new poster.
3. The 2019 AJFA poster(s) language should be updated on websites, training presentations and any pending printing of brochures, pamphlets and materials and replaced with the appropriate 2022 version.
4. State agencies must provide their poster order request using the attached Excel Spreadsheet to their Regional Civil Rights Officer by June 27, 2022. The request must include the number ordered, the poster number (AD-475A or AD-475B), contact person and telephone number, and where the posters will be delivered (street addresses only; no PO Box).

Posters will be ordered and shipped as quickly as possible. In the interim, please contact your Regional Civil Rights Officer (see regional contact list at: <https://www.fns.usdagov/fns-regional-offices>) if you have questions.

Please contact Crystal Tolar, Chief, Compliance Branch, at: [Crystal.Tolar@usda.gov](mailto:Crystal.Tolar@usda.gov) or your Regional Civil Rights Officer, if you have additional questions that are not addressed above or in the FAQs.

Roberto Contreras  
Director  
Civil Rights Division  
Food and Nutrition Service

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CONTRERAS

Digitally signed  
by ROBERTO  
CONTRERAS

#### Attachments

- 1/ NDS All Other Nutrition Assistance Programs
- 2/ AJFA Poster Order Spreadsheet

cc: Associate Administrators  
Deputy Administrators  
Regional Administrators  
Regional Civil Rights Officers



Food and  
Nutrition  
Service

DATE: May 5, 2022  
MEMO CODE: CRD 01-2022

Braddock  
Metro Center

SUBJECT: Application of *Bostock v. Clayton County* to Program Discrimination  
Complaint Processing – Policy Update

1320  
Braddock  
Place  
Alexandria  
VA 22314

TO: Regional Directors  
All Food and Nutrition Service Programs  
All Regions

State Directors  
All Food and Nutrition Service Programs  
All States

<b>Issuing Agency/Office:</b>	FNS/Civil Rights Division
<b>Title of Document:</b>	Application of <i>Bostock v. Clayton County</i> in Program Discrimination Complaint Processing – Policy Update
<b>Document ID:</b>	
<b>Z-RIN:</b>	
<b>Date of Issuance:</b>	May 5, 2022
<b>Replaces:</b>	
<b>Summary:</b>	<p>This memorandum clarifies prohibitions against discrimination based on sex in all FNS programs found in Title IX of the Education Amendments of 1972; the Food and Nutrition Act of 2008, as amended, Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program (7 USC § 2011 et seq.); and related implementing regulations that prohibit discrimination on the basis of gender identity and sexual orientation.</p> <p>USDA/FNS issues this memorandum regarding processing discrimination complaints.</p>

The United States Department of Agriculture’s (USDA) Food and Nutrition Service (FNS) Civil Rights Division issues this memorandum to provide direction to State agencies and program operators regarding processing program complaints that allege discrimination on the basis of gender identity and sexual orientation in programs or activities receiving Federal financial assistance from FNS.

#### Background

FNS enforces prohibitions on sex discrimination found in Title IX of the Education Amendments of 1972 (Title IX); the Food and Nutrition Act of 2008 (Food and Nutrition Act), as amended, Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program 7 USC § 2011 et seq.; and related regulations. In June 2020, the U.S. Supreme Court held in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. \_\_\_\_ (2020), that employment discrimination based on gender identity or sexual orientation constitutes prohibited discrimination based on sex under Title VII of the Civil Rights Act of 1964. In *Bostock*, the Court explained that when an employer



fires an employee for being gay or transgender, the employer fires that person “for traits or actions [the employer] would not have questioned in members of a different sex.” 140 S. Ct. at 1737. This means that “[s]ex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.” *Id.* In other words, being gay or transgender is “inextricably bound up with sex.” *Id.* at 1742.

On January 20, 2021, President Biden issued Executive Order (EO) 13988, “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.” 86 Fed. Reg. 7023. The EO set out the Administration’s policy that all persons are entitled to dignity, respect, and equal treatment under the law, no matter their gender identity or sexual orientation. EO 13988 references the Supreme Court’s holding in *Bostock* and states that *Bostock*’s reasoning applies with equal force to other laws that prohibit sex discrimination “so long as the laws do not contain sufficient indications to the contrary.” EO 13988 directs Federal agencies to review laws and regulations that prohibit sex discrimination to determine whether they prohibit discrimination on the basis of gender identity and sexual orientation.

### Processing Discrimination Complaints

USDA/FNS is committed to ensuring consistent and robust enforcement of Title IX and the Food and Nutrition Act, in furtherance of the commitment that every person should be treated with respect and dignity. In light of *Bostock*, FNS has evaluated the statutes it enforces and determined that discrimination based on gender identity and sexual orientation can constitute prohibited sex discrimination under Title IX and the Food and Nutrition Act. This interpretation is based on the Agency’s legal analysis of the statutory text of Title IX, the Title IX *Bostock* interpretations of the Departments of Justice and Education, the statutory text of the Food and Nutrition Act, and the reasoning set forth in *Bostock* and related caselaw.

As to Title IX, FNS concurs with and adopts the Department of Justice’s and Department of Education’s analyses concluding that Title IX’s prohibition on sex discrimination includes a prohibition on discrimination on the basis of gender identity and sexual orientation. *See* Pamela S. Karlan, Memorandum to Federal Agency Civil Rights Directors and General Counsels, *Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972* (March 26, 2021); Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021).

Regarding the Food and Nutrition Act, the text of the Act’s nondiscrimination provision is sufficiently similar to the language in Title VII that the *Bostock* court relied on in reaching its holding. First, the Act provides that “there shall be no discrimination by reason of . . . sex.” 7 U.S.C. § 2020(c)(1). Title VII of the Civil Rights Act of 1964 prohibits discrimination “because of” an individual’s sex. 42 U.S.C. § 2000e-2(a). The phrases “because of” and “by reason of” are used synonymously. *See, e.g., Bostock*, 140 S. Ct. at 1739 (“And, as this Court has previously explained, the ordinary meaning of ‘because of’ is ‘by reason of’ or ‘on account of.’”) (cleaned up); *cf. Merriam-Webster*, <https://www.merriam-webster.com/dictionary/by%20reason%20of> (last visited Feb. 24, 2022) (defining “by reason of” to mean “because of” or “due to”). Furthermore, in his *Bostock* dissent, Justice Alito listed the Food and Nutrition Act nondiscrimination provision, 7 U.S.C. § 2020(c)(1), among a list of “[o]ver 100 federal statutes [that] prohibit discrimination because of sex” which he anticipated being impacted by the majority decision in *Bostock*. 140 S. Ct. at 1778, 1791 (Alito J. dissenting).

Second, the Food and Nutrition Act, like Title VII, focuses on protecting individuals from discrimination. Title VII expressly protects “any individual” from discrimination. The Food and Nutrition Act also focuses on individual households (“applicant households”), as opposed to program applicants as a whole (“In the certification of applicant households for the supplemental nutrition assistance program, there

shall be no discrimination by reason of . . . sex.”) 7 U.S.C. § 2020(c)(1). As the *Bostock* Court observed, this focus on individuals is significant because it is not a “defense for the employer to note that, while he treated that individual woman worse than he would have treated a man, he gives preferential treatment to female employees overall.” *Id.* at 1741. Similarly, it would not be a defense for a provider to argue that they should not be liable for discriminating against an individual applicant household based on sex because there is data showing that applicants as a whole receive assistance free of sex discrimination.

Thus, FNS concludes the focus on individual households and the prohibition of discrimination “by reason of” sex under the Food and Nutrition Act is sufficiently similar to Title VII such that the *Bostock* analysis applies to the Food and Nutrition Act. This means that the certification of applicant households for SNAP shall be conducted without discrimination on the basis of gender identity and sexual orientation.

State agencies and program operators should expeditiously review their program discrimination complaint procedures and make any changes necessary to ensure complaints alleging discrimination on the basis of gender identity and sexual orientation are processed and evaluated as complaints of discrimination on the basis of sex. State agencies and program operators are advised that the interpretation outlined in this memo does not determine the outcome in any particular case, which will depend on the specific facts and circumstances of that case. Any action taken by USDA in a specific case will take account of all relevant facts and legal requirements, including, where applicable, Title IX’s religious exemption, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq., and any other applicable exemptions.

State agencies are reminded to distribute this memorandum to local agencies, Program Operators and Sponsors, and all other subrecipients of Federal financial assistance. Local agencies, Program Operators and Sponsors, and all other subrecipients should direct questions concerning this memorandum to their State agency. State agencies with questions should contact the appropriate FNS Regional Civil Rights Officer. The FNS Civil Rights Division is available to provide technical assistance as you ensure compliance with Title IX’s and the Food and Nutrition Act’s protections against sex discrimination.

Roberto Contreras  
Director  
Civil Rights Division  
Food and Nutrition Service

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by ROBERTO  
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Attachments

- 1/ Bostock Cover Letter
- 2/ Questions and Answers Related to CRD 01-2022 Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update

cc: Deputy Administrators  
Regional Administrators  
Regional Civil Rights Officers