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### Constructing and Implementing Transgender Policy for Public Administration

Nicole M. Elias  
*CUNY John Jay College*

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# Constructing and Implementing Transgender Policy for Public Administration

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Nicole M. Rishel Elias<sup>1</sup>

## Abstract

Sex and gender are increasingly complex topics that prompt new policy and administrative responses within public agencies. As the federal workforce evolves, federal employment policy must accommodate the needs of employees who do not fit traditional sex/gender categories. One emerging area of policy targets transgender employees, particularly policy that guides the employer response throughout the transitioning process. This research seeks to answer the following questions: How can transitioning policy and implementation within federal agencies affect employees? and How should transitioning policy be crafted and implemented? This work addresses organizational behavior and management issues by presenting a successful case of a workplace transition. Interviews of an administrator guiding the transitioning process and one of the first federal employees to complete a transition while in a federal field office are conducted. Ultimately, this research explores challenges with emergent policy and suggests avenues for designing and enacting future transitioning policy.

## Keywords

public administration, public policy, human resources management, LGBT, transgender

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<sup>1</sup>City University of New York, New York, NY, USA

## Corresponding Author:

Nicole M. Rishel Elias, Assistant Professor, Public Administration, Department of Public Management, John Jay College of Criminal Justice, City University of New York, 524 West 59th Street, Room 53307 Haaren Hall, New York, NY 10019, USA.  
Email: nelias@jjay.cuny.edu

## Introduction

The demographic composition of public agencies is an increasingly important topic for public administration. Sex and gender are complex demographic categories that prompt policy and human resources responses at both the individual and organizational levels. The federal government has been a leader in addressing the changing needs of LGBT (lesbian, gay, bisexual, and transgender) employees in recent years. Prior to 2012, there were no data available regarding the actual number of self-identified LGBT individuals within the federal government. In the absence of LGBT data, knowledge of LGBT employees has been drawn from historical action targeting LGBT federal employees. It was only after 2012 that the U.S. Office of Personnel Management's (OPM) Federal Employee Viewpoint Survey (FEVS), the annual climate survey that measures employees' perceptions, included an LGBT demographic question.<sup>1</sup> The FEVS LGBT demographic question asks respondents, "Do you consider yourself to be one or more of the following? Heterosexual or Straight; Gay or Lesbian; Bisexual; Transgender; I prefer not to say."<sup>2</sup> OPM collapses the "Gay or Lesbian," "Bisexual," and "Transgender" categories into one publicly reported "LGBT" category. Including the LGBT question in the FEVS is a significant step in obtaining valuable data on employee perceptions of their work experience. Although these survey data are useful in a number of ways, almost all public administration scholarship on LGBT federal employees relies on the FEVS and does not provide detailed accounts of personal LGBT experiences in the federal government.

This research seeks to fill this gap by exploring the transgender experience in greater detail. A significant aspect of a transgender person's experience is his or her transition, which becomes even more significant when it is done in both a personal and professional space. To examine this process, I present a successful case of a workplace transition through interviews of an administrator guiding the transitioning process and one of the first federal employees to complete a transition while in a federal field office. The goal of this work is to answer the following questions: How can transitioning policy and implementation within federal agencies affect employees? and How should transitioning policy be crafted and implemented? This research highlights challenges with emergent policy and suggests avenues for designing and enacting future transitioning policy.

In this article, I present an overview of the history of LGBT employees in the federal government. Next, I review current transgender protections in the workplace. I then highlight the key insights from the two in-depth interviews. Then, the analysis and recommendations for policy and implementation are

distilled from the interview data. Last, I conclude with final thoughts on this developing policy and future research directions.

## **History of LGBT Employees in the Federal Government**

The difficult history of LGBT employees within the federal government involves discriminatory practices beginning in the 1950s. The period known as “the Lavender Scare” began with Senator Joseph McCarthy’s claim that 205 Communists were working for the State Department (D. K. Johnson, 2004, p. 1). John Peurifoy, the Deputy Undersecretary for the State Department, denied that the State Department employed Communists but revealed that a number of individuals whom the Agency considered to be security risks had been forced out, including 91 gay individuals (p. 1). This prompted key actors such as politicians, journalists, and citizens to believe that gay individuals posed more of a threat to national security than Communists (p. 2). During this time, there was an underlying “fear that [Gay individuals] posed a threat to national security and needed to be systematically removed from the federal government” (p. 9). This fear led to the removal of thousands of government employees (p. 166). By November 1950, in what some politicians defended as “the purge of the perverts,” nearly 600 federal employees were fired from the government due to their sexual orientation (p. 2). Then, in 1952, President Eisenhower’s campaign slogan focused on the promise to rid the federal government of corruption, communism, and sexual perversion, or “Let’s Clean House” (p. 121). He later went on to issue an Executive Order which disqualified anyone from federal employment who had a “sexual perversion” (Executive Order 10450, 1953).<sup>3</sup>

During the Lavender Scare, there was no record of an openly transgender federal employee. However, there is evidence that an individual was targeted if his or her gender expression did not conform to the cultural sex stereotypes of the sex he or she was assigned at birth. In 1953, one State Department worker accused 18 coworkers of being potential security risks due to their physical traits (pp. 119-120). She alleged that the female coworkers she identified had deep voices, unfeminine faces, odd shaped lips, and small hips. In addition, she accused a male coworker of having a feminine complexion and a peculiar girlish walk (pp. 119-120). It was assumed by the State Department employee that these individuals did not conform to how she believed a man or woman should look or act because he or she was gay. These allegations were added to the permanent record of each accused employee, and each employee was investigated (pp. 119-120).

In 1978, the Civil Service Reform Act (CSRA) was passed. This Act defines prohibited personnel practices, one of which was a prohibition on discrimination against federal employees for conduct not directly related to job duties (CSRA, 1978). In 1980, OPM found that this applied to sexual orientation, and that an individual who believed he or she was discriminated against based on his or her sexual orientation could file a complaint with the U.S. Office of Special Counsel (OSC; Hicks, 2014). However, the interpretation of sexual orientation protection under the CSRA has never been specifically addressed in a judicial decision by the U.S. Merit Systems Protection Board (MSPB; 2014, p. 45). Departing from this difficult history, we begin to see progress in positively acknowledging and supporting LGBT employees throughout the federal government.

## Transgender Protections in the Workplace

According to many LGBT scholars, transgender individuals<sup>4</sup> (the “T” in this acronym) are still being left behind when it comes to workplace policy protections (Currah, 2008; R. G. Johnson, 2011; Marks, 2006; Morrissey, 2007). While sexual orientation<sup>5</sup> is increasingly included in the list of protected classes within public sector workplaces, gender identity<sup>6</sup> is often neglected, possibly due to ignorance or bias. Currently, the primary recourse for transgender individuals who feel they have faced discrimination in the public sector workplace is a lawsuit under Title VII of the Civil Rights Act of 1964 (Gordon, 2009). In 1964, Congress passed Title VII of the Civil Rights Act, which prohibited discrimination on the basis of sex and other statuses. Since 1964, the Supreme Court has often analyzed what “sex” means within the Act. In the landmark case of *Price Waterhouse v. Hopkins* (1989), the Supreme Court determined that Title VII prohibits discrimination because an individual fails to conform to gender-based expectations. In that case, the Court found that discriminating against someone because he or she does not meet a traditional, gender-based stereotype, including how a woman or man should act, dress, speak, or otherwise behave, is discrimination based on sex under Title VII. This case developed the “sex-stereotyping” theory of sex discrimination. Relying on *Price Waterhouse*, the U.S. Equal Employment Opportunity Commission (“the Commission” or “the EEOC”) has found that discrimination against an individual because of his or her sexual orientation may state a claim under Title VII’s sex discrimination prohibition because the discrimination is based on sex stereotypes. Because the Commission has jurisdiction over claims of sex discrimination, these claims should be processed through the federal sector EEO process.<sup>7</sup> Many federal courts join the Commission in processing claims of sexual orientation discrimination as claims of sex discrimination under Title VII.<sup>8</sup>

Regarding transgender claims of discrimination, the Commission found in *Macy v. Department of Justice* (2012) that discrimination against someone because he or she is transgender is discrimination based on sex that is prohibited under Title VII. In *Macy*, the Commission found that while transgender complainants may use the sex-stereotyping theory the Supreme Court used in *Price Waterhouse v. Hopkins*, he or she is not limited to using only that theory of sex discrimination, because discrimination against someone because of gender identity or transgender status is, in and of itself, discrimination because of sex and is prohibited by Title VII.<sup>9</sup> Since the Commission issued *Macy v. Department of Justice* (2012), other federal agencies have agreed that claims of transgender employment discrimination are claims of sex discrimination. For example, in 2014 the OSC, citing to the Commission's decision in *Macy*, found that not allowing a transgender female to use the female restroom after she transitioned was sex discrimination (OSC, 2014). Also in 2014, Attorney General Eric Holder directed the Department of Justice that it will include gender identity and transgender claims of employment discrimination under sex discrimination claims prohibited by Title VII (U.S. Department of Justice, Office of Public Affairs, 2014).

Although discrimination is addressed at least in theory through Title VII as well as the various protections put in place by states and municipalities (Colvin, 2007), there are no specific regulations or government-wide policies in place to guide the transitioning process in the workplace. From the example set by the federal government, there is a trend of states and municipalities developing policy that protect transgender individuals from employment discrimination (Colvin, 2007). However, transgender employees continue to face unequal treatment in the workplace when comparing wages, promotions, and benefits of their non-transgender counterparts (Colvin, 2007). These disparities are often exacerbated when transgender employees occupy intersectional identities with other statuses such as racial or religious minorities. Although there have been numerous studies and court cases that define being transgender as a condition with substantiated negative outcomes if the needs of the individual are not addressed (Marks, 2006), there is little support in terms of health care or non-discrimination policy from the federal government for transitioning employees.

This project delves deeper into the experience of one federal employee who transitioned on the job with the guidance of an EEOC official charged with overseeing the employee transition, but this case is unlikely to be the norm. Currently, transgender individuals in the federal government, as well as state, local, and private sector employees, are often on their own when it comes to transitioning in the absence of clear policy guidance and institutional support (Colvin, 2007; R. G. Johnson, 2011; Morrissey, 2007).

Although the act of physically transitioning is an important milestone in a transgender person's life, there is limited and inconsistent formal policy in place across the federal government for those who wish to transition.

Some agencies have created transitioning policy and procedure; yet, there is no government-wide federal policy for transitioning (Colvin, 2007; Taylor, Lewis, Jacobsmeier, & DiSarro, 2012). In fact, more commonly, state-level protections have been passed with a focus on gay and lesbian individuals, and are then used to protect or support the passage of similar legislation for transgender individuals. To date, no states have passed any type of transgender protection in the workplace without first passing legislation that prohibits discrimination against gay and lesbian individuals (Taylor et al., 2012). Transgender employment policy has been completely dependent on existing legislation intended for individuals who will not transition, leaving out protections and benefits that are critical to a significant aspect of the transgender experience. As the federal government continues to create and implement policies protecting LGBT employees, it is increasingly important for federal policy to address the specific needs of transgender employees.

## **The Transitioning Experience of a Federal Employee**

To gain a better understanding of the experience of transgender public employees and the need for transitioning policy, two in-person, open-ended interviews were performed targeting one of the first federal employees to transition in a federal field office (see Appendix B for interview questions). The interviewees were the transgender federal employee and the experienced agency representative from EEOC who guided the transition.<sup>10</sup> Each interview took place in September 2014 and lasted approximately 3 hr. The interviews were conducted at the EEOC headquarters in Washington, D.C. During interviews, the researcher asked questions and a note-taker was present, occasionally asking follow-up questions. The goal of this project is not to produce a generalizable or replicable study. The nature of this subject is deeply personal and is likely different for each transitioning individual. Rather, the aim of this work is to provide rich detail and insight into a little-known process lacking formal policy in the federal government.

The federal employee provided rich details of her<sup>11</sup> experience, and her perspective deserves far more attention than it is given in this article. Given the confines of this project, I focus on her personal reflections of her experience within the federal government and recommendations for improving the transition process for other federal employees. At the onset of the interview,

I asked her to explain how she understood sex–gender definitions and categories and how she fits, or does not fit, within these categories. She said that

The employee explained, “I usually feel like a woman, and usually feel female, but not always. I am most comfortable expressing myself in a feminine way, but that doesn’t necessarily mean that I identify entirely as a female. I identify as non-binary, but I identify as a woman”.<sup>11</sup>

she views herself as being born male, expressing her gender as a female, but emphasizes that true gender is something else.<sup>12</sup> She first cross-dressed when she was 6, and she was told that boys do not do that. So she said, “ok, I am a boy.” According to this employee,

[My] internal talk is mostly female. I spent most of my life making sure my internal talk as a female never left the inside. I did a lot of macho, masculine things, such as fishing in the Bering Sea and climbing mountains. In living that way, I minimized any gender expression that can be interpreted as female.<sup>13</sup>

Her transition history within her agency raises both personal and professional considerations that cannot be easily separated. She was in this same agency for 8 years when her transitions began in January 2011. She described how at the onset of this process, she knew that something had to change. She weighed 50 pounds more than now, she had a beard, could not stand to look in the mirror, and inside she was feeling “dark.” If something did not change, she would have to reconcile living in a way that was intolerable. She began by changing her diet, running 5 km every day, and working out in gym. She did everything she could to get her body fit, and once she was fit, on July 15, 2012, she went online and ordered hormones. She believes this was a “stupid” decision, but she felt like there was no one she could tell—no one she could talk to. She started taking low doses of estrogen and testosterone suppressor. She did this for 6 months and still had a beard, but her body began to change a little bit, and she began to feel normal. During this time, she was married and her wife asked her whether she was trans and/or whether she was gay. She denied being transgender, but being gay was harder to answer, because she was gay for about 8 months in her 20s. At that time the term was “gay,” because she did not have a vocabulary yet for what it means to be transgender. She tried to be gay in her 20s, because she could not figure out what was wrong with her. She went to gay bars, was in theater, and went to a bath house once and was “grossed out.” She discovered quickly that this was not where she wanted to go. Then, all of her friends started to die when the AIDS epidemic hit the United States. Most of the people she cared for were gay, and she watched them get sick and die. She was so scared she said to

herself, “I am a guy, I am an alpha,” and she stuffed everything else away until it would not longer stay stuffed.

After starting hormones, this transition was not readily apparent or acknowledged at work. She stated,

nobody cared. I wore earrings, but that wasn't a big deal. I didn't wear women's clothes at work. Around 2013, [I] stopped wearing t-shirts as [I] started “getting tits” and started wearing loose fitting clothing. [I] wore a sports bra to hold my breasts in, and I wore button up shirts.

She confided in one health care professional at work, because she hoped that she could find someone she could talk to and stop pretending to be someone else. She also told the health care professional because she had to let the nurse know that she was taking hormones due to the risk of blood clots and thrombosis.

Then in November 2013, on her way to therapy one day, she went to the courthouse and changed her name. It was somewhat spontaneous and somewhat planned. She had to bring her passport, had to affirm she is an adult, doing this on her own free will, and that she was not falsifying information. In her experience, to have her gender marker and drivers license changed, she had to have a court order with her name change and a letter from a doctor. Her driver's license was sent via regular mail with her old male picture on it and the gender marked “F” for female. Then, she went to the Department of Motor Vehicles to get a new picture taken. She describes this experience:

I wanted the new license more than I wanted life. This affirmation made it all real. The piece of paper from the court that said her name and the license that said she was a girl meant everything to me. For the first time in my life who I was, and who it said that I was, linked up and was correct.

The driver's license change process was finalized in January 2014.

January 2014 also marked her first contact with the federal government regarding her transition. She started by emailing OPM and said, “I am girl. You have me listed as a boy. You have my name listed incorrectly, please change it.” There was silence for months. Her email was bounced around to many individuals in human resources offices and other offices, because no one knew what to do. There was no idea of confidentiality—No one knew how to handle this issue or that it had to be kept confidential. She finally heard back from OPM, and they sent her Title VII documents. She was so frustrated, because she understood the law, but was still unclear as to what to do in order to transition in the workplace. She was seeking guidance on exactly what steps to take to transition. She looked online on government-wide sites such as

OPM's and her agency's intrasite but could not find any information on what she should do to transition at work. At this point, she was incredibly frustrated: "I realized that these people just don't get it. And then the angels of mercy came through." She refers to the individuals who oversaw her workplace transition as "the angels of mercy," because they were there to assist at one of the most significant personal and professional moments of her life. These three people became the transition team by means of self-appointment and were duly authorized, one was an official from EEOC, the others were from the employee's Office of Civil Rights and Office of Human Resources at her agency. The transition team was largely guided by EEOC federal official charged with overseeing her transition.

At this time, the EEOC official explained that the transitioning employee would be setting new policy in the absence of existing policy, so this process should be handled with care. After that first set of phone calls with the transition team,

I went for a walk and cried a little bit. I felt relief, I felt scared, I felt optimistic, I felt whole, I felt joyful, I felt empowered, I felt fabulous—absolutely fabulous. Then I started thinking about what I was going to wear.

This was the employee's initial reaction to her transition in the workplace. She describes the initial set of considerations:

We talked about whether I should be there or not—I was willing to be there. But I wanted people to be able to talk openly and say things like "This is not cool, this is not OK" and I knew they wouldn't it in front of someone who could hack their database and make their life hell. So, it was determined that nobody talks about it until the day of the transition. It was simple and elegant.

The transitioning employee told her director right before she told other management officials, about a month before the official transition date. Two weeks before the day she came out at work, she had a meeting with some coworkers in a different field office, and she came out to them during lunch and they reacted positively.

On transition day, the transitioning employee called a meeting for her staff and told them directly that she is transitioning and that they have to go to this meeting. She said,

I told them what gender is and what gender dysphoria is, and I talked about my life in 5 minutes. I said there is going to be more information, but I wanted you to hear from me, and I am going to be coming in here living and breathing as a woman. They responded, "what's for lunch?"

One colleague said his neighbor's son was transgender, and he knew about the pain. He was compassionate and said that it really meant a lot to him that he was told face-to-face before the big announcement. The transition team had planned that she would leave as the meeting was starting, and she would not come back for a week, because she wanted people to get use to the idea. She wanted people to wrap their brains around it, talk about it among themselves, and then a week later this new information would have a chance to sink in. However, she came into the work cafeteria after the first meeting on transition day dressed as a woman. After she returned to work, nothing happened. There were LGBT ally stickers all over the office that the EEOC official gave to coworkers. It went viral. Lots of people hugged her, there were a lot of affirmations. She did not encounter any negative comments, but there were a few people who had trouble with it because of their faith, but they never said anything directly to her. Their demeanor changed. People who she had been friendly with, talked to, shared lives with, they were no longer interested. Most people were incredibly gracious in trying to get names and pronouns correct. Mistakes are still made today, but she does not point it out because it is not malicious. "Usually people immediately correct themselves when they make a mistake," she explained.

The primary goal of the transitioning employee was to be accepted as a woman after the announcement. She was focused on her outward presentation and wanted to get it right. This was so important to her because, as she explains it:

I am a girl, and I wanted to be accepted as a girl. I didn't want people to look at me as a fool or as a freak. I was focused on looking the part I am playing. I was coming on stage as my authentic identity, and I wanted that to come off well. That was very, very important to me. Secondly, I wanted to do my job well. It was really important to me that I was effective. So if anything, I was Ms. Engineer for a week. I damn well better do my job really well. I felt a responsibility to whomever came next not to screw it up. I take that very seriously. It is extremely important to me that I not mess it up for the next person. For me it was so important—if I could not have done this, I don't know what would have happened. It was a crisis for me, it was a spiritual and emotional death. So when I came into work I was pretty as I could be, as feminine as I could be, and as productive as I could be.

Reflecting back on the process today, she believes it was overwhelmingly positive especially in terms of how informative and accessible the EEOC official was with her colleagues.

The transitioning employee did note challenges with her superiors and with changing official government-wide records during the process. Because

she had so much control over how this process was handled, she believed that her supervisors were frustrated at times with their lack of control. The EEOC official stated that said there was a supervisor who did not follow the transition plan because of cultural issues within the office, and she did not send out information about the meeting and did not say that it was mandatory. She only sent out information about the meeting 24 hours in advance instead of a month in advance, as originally planned. There was a general concern from management about how headquarters perceived them as managers and their ability to handle this situation, as well as how they worked with the transition team. They wanted to know how high up in the agency this went. Superiors wanted the agency's headquarters to know that they handled this situation appropriately and did a good job. Yet, the transitioning employee saw the ability to create the policy to suit her situation as a positive aspect of her experience:

Tailoring the policy specifically to me was helpful and empowered me. It gave me input, and it was less scary. If I want to be there, I can be there. If I don't want to be there, I don't have to be there. It took time to change personnel files, computer files, accounts, database accounts, nametag on your door, email address, employee queries, changing name and gender on 401K, health insurance, etc. It took about a month after the transition date for all agency records to be changed. It was mostly in place quickly, but there are so many systems that are not integrated, so they cannot change name and gender marker in one computer system—it had to be done individually.

She explains that she is still coming across incorrect information years later. Health insurance records were rather difficult to get updated, and the agency was not particularly helpful in providing documentation to the insurance carrier.

The transitioning employee described the change of balancing organizational and employee needs. You have the organization's mission, and that is the paramount responsibility of the director and administrators; that they have an individual who is transitioning is potentially disruptive, and how you balance the overriding mission of the institution and the responsibility to be sensitive to the needs of the employee is, in a governmental setting, going to be skewed toward the employee. The advantage is skewed in the federal government toward the employee because of the protections given by the EEOC in the *Macy* decision. Employees in the private sector do not always have such protections. To improve the organizational climate and make transitioning on the job as seamless as possible, this employee highlights the need for organizational integrity. She explains,

To promote organizational integrity, you can do that by training and by example. I have respect for those who run the agency. If you give me training, and give me a reason, and make me understand as an employee what it is that this agency is trying to do, why they are doing it, and how it is going to enhance the accomplishment of the group, that will work.

Transitioning in the workplace did not help this employee do her job better. She describes herself pre- and post-transition:

Before I transitioned, I was a really really employee. I won a lot of awards and was employee of the year. Part of the reason I was so good, is because you can disassociate yourself with your own personal issues and focus all of that energy and passion on what your job is, and I did very well. I am a much much better person today, but I am not as good at my job. I am probably a much better boss. I am not totally focused on an immediate task or project.

Post-transition, she no longer went to work on Monday and worked straight through to Thursday sleeping in the office. She described herself as always being a good mentor, trainer, and friend, but not being entirely there. Pre-transition, she would expect her employees to put aside their family to get the task done, because that is what she did. She would never tell them they had to, but she explained that “the pressure you can put on an employee simply by if nobody goes home because we have a deadline, and you go home, she would have made her employees feel badly in the past.” This did not happen post-transition. Now, if her employees are working past 7:00 p.m., she tells them to leave. She described this shift:

Employees think I am awesome, pre- and post-transition. They like that I smile more [post-transition]. I know the names of their children now. Before, I would only talk about our mission, deliverables, schedule, and resource allocations. Now I come in and I talk to my employees about what colleges their kids are going to go to, or their daughter’s alcohol issues, and when people bring their children in I play with them instead of do my job.

The EEOC official who oversaw this transition spoke primarily about her role in guiding this specific transition and also mentioned her role in assisting and advising other transitions and larger government-wide efforts to construct and improve the implementation of transition policy. She emphasized that the transgender community has played a significant role in advocating for individual agencies to implement transgender policy. Transgender groups such as the Transgender Law Center have met with individual agencies to discuss benefits and policies for transgender federal employees. She highlighted key

moments and policy shifts that have made an impact on transgender employee policy.

She explained that prior to the *Macy* decision in 2012, protections under EEOC were nonexistent, but post-*Macy*, the EEOC has taken on an active role in providing training on this decision and sexual orientation issues. At one training, she met a transgender federal employee who told her of a terrible experience as a result of limited information. There was nothing on her agency's website, everything was left for her to figure out as it related to her transition, even in the 3 to 4 months post-*Macy*. After *Macy*, the EEOC official started to get calls from agencies by default, because she was the only EEOC official giving training on transgender issues, so she became the "expert." Questions ranged from bathroom and locker room policy to dress code, what it meant to have an "official" on-the-job transition, and surgery requirements.

She noted that in the first year following *Macy*, she received significantly more calls about employees transitioning compared with previous years, and she believes this is a result of the job security that *Macy* provided. Prior to *Macy*, she typically receives about three to five calls a week regarding transgender issues. One agency had six requests for gender neutral pronouns and bathroom spaces. This poses interesting challenges because, again, the EEOC official has no official role in mandating change within agencies. She did believe that the EEOC will likely issue transgender guidelines in the future, particularly in the area of restroom policy. The EEOC does require all agencies to have an anti-harassment policy in place, though this policy does not necessarily need to include transgender-specific policy. The U.S. Department of Interior's (DOI) policy is an example of an agency that does include transgender, gender identity, and gender expression in their anti-harassment policy.<sup>14</sup> Although many anti-harassment policies do not specifically use the term "transgender," even post-*Macy*.

Inconsistencies in the way transgender policy and implementation are handled from agency to agency have become a government-wide problem, especially for transgender employees who move from one agency to another with a different protocol. For example, the transitioning employee interviewed for this project transitioned in the absence of official agency policy. Since her transition, her agency has created a plan, largely because of her experience. The federal government does not track government-wide LGBT or transgender plans, but to the EEOC official's knowledge, approximately five agencies have plans in place and about another five more have expressed interest in creating plans in the absence of a transitioning employee prompting the need for a plan. The lack of LGBT employment data in the federal government is also problematic. Sexual orientation and identity are not

included in personnel records when employees enter the federal government nor does the EEO track complaints based on gender identity or sexual orientation alone. The EEOC does, however, track complaints based on sex, which can include gender identity and sexual orientation. The annual FEVS is the only record of LGBT identity, though this survey is anonymous and OPM does not break the data down by L-G-B- or T-subcategory or agency for anonymity purposes.

When asked whether some agencies are more or less difficult to work with when called to assist with a transition, the EEOC official indicated that some are more challenging. She said that some agencies' civil rights offices are very interested in adopting policies but do not have support from leaders. Leaders can be hesitant because of controversy, religious objections, some employees becoming uncomfortable, or other reasons that affect the agency's internal dynamic. This variation from agency to agency reflects the larger national conversation and mood, according to the EEOC official. She emphasized the need to get agencies onboard, educate agencies, and get leadership and coworker buy-in.

The EEOC does not mandate training unless there is a finding of discrimination, then training is ordered, but even then it does not have to come from the EEOC. There is never mandatory training. EEOC outreach programs do tell agencies what training is available and most training is free. One suggestion the EEOC official made to promote greater knowledge and access was for the EEOC to issue a sample transition policy that agencies could amend as needed and individualize with EEOC approval. EEOC issued a similar template for harassment policy, and the EEOC official believed this may be a future EEOC project with positive implications for transgender policy.

When discussing barriers to individual agency and government-wide transition policy adoption, coworker objections were cited as a significant obstacle. In her experience, the EEOC official believed that most of these objections take place in face-to-face work settings, but she has yet to see formal objects or counterclaims waged in an official capacity. Instead, she explained that "objections" to transitions typically take the form of eye rolls, angry scowls, or leaving the room in day-to-day coworker interactions. Occasionally, these interactions can be very vocal when coworkers believe they will be personally violated in some way by an on-the-job transition.

Recommendations for practice were extensive from the EEOC official; it was evident that she thought much more could be done to improve the policy and implementation of transitions in the federal workplace. The EEOC official believed that trainings should be more coworker oriented to educate peers about transgender employee issues. In her experience, there was often a lack of knowledge or misunderstanding of the transgender experience. She

thought that a model plan should reiterate discrimination and harassment policies, and should include sexual orientation and transgender guidance. The model plan should also explain sexual orientation and how it differs from sexual identity, or being transgender. Such a plan should highlight privacy issues, record change issues, and the use of pronouns and names corresponding with identity by all agency representatives. In addition to these recommendations related to transgender employees, the EEOC official saw gender non-conformity policy as the next major challenge for agencies to grapple with in practice. Like transgender policy, she has received many calls with questions about this issue and suggests a proactive approach to detailing pronoun and name usage in anti-harassment policy.

## **Analysis and Recommendations for Policy and Implementation**

From the interviews of the transgender federal employee and the EEOC agency representative who guided the transition, several key themes and recommendations for policy and practice came to light. To make these findings and recommendations useful for practice, I highlight what an agency that has decided to proactively facilitate transitioning employees can do to make this process successful. Although these recommendations apply specifically to the federal government, other government, non-profit educational institutions, and private organizations should consider these policy and practice recommendations.

### *The Need for Policy*

The most important finding is that a majority of federal agencies lack a comprehensive transgender and other gender non-conforming employee policy. The lack of either government-wide or agency-specific mandatory policies regarding issues particular to transgender federal employees is problematic. Of the approximately 235 federal agencies (including sub-components), only a few have a formal policy in place that specifically addresses transgender issues, including National Aeronautics and Space Administration (NASA), the DOI, the Internal Revenue Service (IRS), and the U.S. Department of Labor (DOL). To have effective change within an organization, a written policy implemented and enforced from the top leader of the organization is essential to make clear what the direction, values, and attitudes of the overall organization is toward a specific topic such as inclusion for transgender employees in the workplace (Chen, Sawyers, & Williams, 1997, p. 861). It is important that agencies prepare for a workplace transition before they are

approached by an employee who requests workplace changes because of a gender transition. An effective way to do this is to include a section in the transgender policy that describes the agency's workplace transition process.

In the absence of a comprehensive transgender and other gender non-conforming employee policy, agencies are unprepared for an individual to transition in the workplace, because most agencies have not taken proactive steps to consider and develop a transition plan. Without such policy, agencies do not have a designated point of contact for transitions, so transgender employees who want to transition in the workplace do not know where to go to begin the process or find answers to their questions about the workplace transition. In addition, without a standard set of practices, agencies do not have a comprehensive list of records to change and do not know what is required to change the records, which often results in records being missed or agencies requiring overly intrusive medical documentation from a transgender employee. Some management officials erroneously require proof of gender reassignment surgery before beginning to process an individual's workplace transition.

Having a comprehensive transgender and other gender non-conforming employee policy does not entail rigidity in practice; rather, the policy should give the transitioning employee the opportunity to develop the transition plan with the agency's transition team or representative. The policy should make clear that it is up to the transgender employee to decide when, with whom, and how much to share private information. If the transgender individual wants management to inform coworkers of the transition and any workplace changes, the agency should support management by giving guidance on what to say. For example, the U.S. Postal Service has created a "standard talk" for managers to use when informing employees that a coworker is transitioning. The policy should be clear that the agency will change all records to reflect the correct gender and new name of a transgender individual in a timely manner. As a best practice, the agency should keep a checklist of all records that need to be changed to ensure that a record is not missed.

The primary benefits of having a transgender-specific employee policy in place include the following: It gives transgender employees a sense of security; transgender employees, supervisors, and coworkers will know the protocol to follow when an employee transitions in the workplace; it encourages supervisors and coworkers to be comfortable with a workplace transition; it educates supervisors and coworkers about what to expect when someone transitions in the workplace; and it shows official support and structure for workplace transitions instead of transitions being handled on an ad hoc basis. Each federal agency should create its own internal policy to address issues specific to transgender employees. The policy should serve as a support tool for transgender employees to understand their rights and where to go for

assistance. In addition, the policy should be used as a means to educate cis-gender employees.

### *Policy-Specific Issues to Address*

One aspect of transgender employee policy that has garnered significant attention is the restroom and locker room issue.<sup>15</sup> A lack of clear agency policy regarding restroom and locker room usage often results in conflict in the workplace for transgender individuals. Openly transgender employees are often not welcome or are outright prohibited from using the restroom or locker room that corresponds to their gender identity. Many federal employees use a locker room to change into their uniforms or when using the agency gym. In addition, some federal employees' positions necessitate the usage of showers in the locker room (e.g., fire fighters in the Forest Service). The open-shower floor plan of many facilities does not afford transgender individuals with a sense of privacy and safety that many of them need. Others often express discomfort about sharing restrooms with transgender people because of "baseless fears regarding personal safety and concern for bodily privacy" (Mottet, 2002, p. 740). These fears are often not supported by facts, as transgender individuals are no more likely than other people to commit assault in restrooms, and virtually all restroom facilities are constructed with stalls that offer individuals privacy (p. 740).

In 2015, the EEOC issued a decision in *Lusardi v. Department of the Army*, in which it found that, when an individual has transitioned to the gender that reflects his or her gender identity, denial of equal access to the restroom that corresponds with the individual's gender identity is discrimination under Title VII. Furthermore, once an individual has transitioned to being a woman, she is a woman, and Title VII therefore requires that she be provided equal access to the women's restroom. Similarly, once an individual has transitioned to being a man, he is a man, and Title VII therefore requires that he be provided equal access to the men's restroom. This decision makes clear that an employer cannot condition an employee's access to a particular restroom based on the employee undergoing any particular medical procedure. Finally, the decision stated that supervisory or coworker confusion or anxiety does not justify discriminatory terms and conditions of employment, including denial of access to particular restrooms. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort.

Transgender policy should state clearly that employees shall have access to restrooms and locker rooms corresponding to their gender identity.<sup>16</sup> The

policy should make clear that at no time will the agency require a transgender employee to have undergone any particular medical procedure, or provide proof that the employee underwent any medical procedure, to have access to a restroom or locker room designated for use by a particular gender that corresponds with his or her gender identity. Some agencies are taking innovative approaches to ensure that every employee has a restroom that he or she can access comfortably, and agencies can look to them for best practices. For example, in addition to making clear that employees will have access to the restrooms of the gender they identify with, the National Security Agency (NSA) is retrofitting all current facilities (to the extent possible) to include at least one all-gender restroom.<sup>17</sup> In addition, NSA has created a policy which explicitly states that any future building contract will require all-gender restrooms in addition to the traditional men's and women's restrooms. Similarly, the IRS includes an "IRS Nationwide Restroom Listing" with its Gender Identity Guidance. This document lists the location of every all-gender restroom as well as traditional men's and women's restrooms at every facility. In April 2015, White House officials announced the designation of an all-gender bathroom in the Eisenhower Executive Office building for use by both staff and visitors (Shear, 2015). The White House, NSA, and IRS allow any employee to use the all-gender restrooms, and no employee is ever *required* to use the all-gender restrooms. All-gender restrooms consist of a single room/single-user restroom, or a large restroom with multiple private stalls.

Dress code policies that require gender-conforming clothing are also problematic for transgender individuals. For example, some transgender individuals have been told to change clothes to those stereotypically matching the sex assigned at birth (Leff, 2011). It is clinically and medically necessary for transgender individuals in particular to be able to wear clothing consistent with their gender identity; failure to do so could cause harm to their mental health (Levi, 2006, p. 99). In addition, gender-conforming dress code policies assume that all individuals fall into a female–male binary; however, many individuals identify as gender non-binary. Someone who may identify as gender neutral, for example, may not comfortably fit into sex-specific dress codes. While all individuals have a gender identity, not every individual's gender expression matches the sex stereotypes of how society has determined that gender should present itself, such as feminine females or masculine males (pp. 93-94). Men and women who are forced to conform to externally imposed gender norms, such as in dress code policies, experience concrete harms in the workplace (p. 91). An agency-specific transgender policy should articulate the agency's dress and grooming standards, and should make clear that when a transgender employee is in the process of transitioning and after the transition, he or she may dress and groom consistent with his or her

gender identity. The policy should also state that no employee will be required to dress and groom in conformance with a sex stereotype of how a particular gender should present.

Another critical policy concern is that a lack of agency-specific policy regarding the proper use of the name and pronoun corresponding to a transgender individual's gender identity often results in managers and coworkers using the wrong name and pronoun. In addition, there is often no agency policy that addresses the pronoun usage for individuals who identify as gender non-binary and who request the usage of pronouns other than the traditional male or female pronoun. The EEOC found in *Jameson v. U.S. Postal Service* (2013) that the intentional and repeated misuse of a transgender employee's new name and pronoun states a claim of sex-based discrimination and sex-based harassment under Title VII because it could cause the employee harm. When coworkers refuse to use the correct pronoun for a transgender colleague, this is "fundamentally disrespectful and demeaning, especially when recognizing their gender identity requires only marginal effort and no inconvenience" (Mottet, 2002, p. 740). Again, OPM should expand the definition of "Transgender" to include gender non-binary employees and clearly communicate this definition to agencies. The agency-specific transgender policy should include the agency's clear stance that transgender, gender non-binary, and other gender non-conforming employees are entitled to be addressed by and referred to with their preferred name and pronouns, both verbally and in writing.

## Conclusions and Future Research

This work provides a detailed account of one transition in a federal field office from the perspective of the transitioning employee and EEOC official who guided the transition. It is evident that there are numerous remaining challenges for transgender federal employees. Most importantly, this research presents specific recommendations that can be added to a federal agency's toolbox of strategies for achieving the goal of creating a model workplace of fairness and inclusiveness for all of its employees. These findings are not limited to federal agencies and can inform other organizational environments, including state and local government, non-profit and private organizations, and institutions of higher education.

For transgender and other gender non-conforming employee policy to be effective in any organizational context, the policy should include several general best practices to improve organizational and coworker dynamics for transgender employees. To be taken seriously, this policy should come directly from the head of the organization. The policy should convey the

organization's expectations of workplace inclusion and its prohibition on discrimination and harassment against transgender employees, and it should clearly identify a point of contact within the organization who can assist with workplace gender transitions and serve as a resource for all workplace issues for transgender employees, managers, and coworkers. The policy should include the organization's position regarding privacy and confidentiality for transgender and other gender non-conforming individuals. It should be clear in the policy that transgender employees may choose to discuss their gender identity openly or to keep that information private. Ultimately, transgender and other gender non-conforming employee policy should be formal, detailed, readily available to all employees, and supported by leadership regardless of the organization type.

Interviewing the federal employee who transitioned on the job and the EEOC official who guided the transition provided numerous insights and opportunities for improving the details of transitioning policy and practice. This research is not intended to produce a generalizable or replicable study, but with more work in this area, scholarship can expand the scope and generalizability of future studies. This subject itself is deeply personal and is likely to vary for each transitioning individual. The aim of this work was to provide rich detail and insight into a little-known process lacking formal policy in the federal government. Exploring how current transitioning policy (or lack of policy) and implementation within federal agencies can affect employees is critical for considering what is needed to support transgender employees and how to craft future transitioning policy. From the interview data obtained here, transitioning policy should be designed and implemented in ways that benefit the individual transitioning and agency as a whole, which are not mutually exclusive goals. After reviewing the troubled history of LGBT employees in the federal government, current transgender protections in the workplace, key insights from two in-depth interviews, and making recommendations for policy and implementation, it is evident that new avenues of research are needed.

Research focusing on gender identity policy in the public sector workplace is very limited, and it is clear that there is work to be done in the public sector to increase awareness and create new policy that will protect and benefit transgender employees. The federal workplace represents a constantly evolving environment for LGBT employees. From historic discriminatory practices to rapidly expanding legal protections, federal agencies continue to progress in many areas to make the workplace more inclusive. Future research should not focus on quantitative or qualitative analysis exclusively. Rather, incorporating both quantitative and qualitative data, where available, in

research and reports provides a fuller picture of the transgender experience that can support policy improvements.

To expand the generalizability of this line of research, quantitative data should go beyond the general variables and questions of the FEVS and include more specific breakdowns of identity categories and nuanced issues that shape the LGBT employment experience. In addition to improving survey data, different agency types within the federal government should be examined. For example, understanding the experiences of transgender employees in regulatory versus distributive agencies may shed light on critical agency dynamics that effect individual employees.<sup>18</sup> More transgender policy and transgender employee experiences outside of government agencies, such as private and non-profit organizations, and institutions of higher education, should be analyzed as well. These comparisons would be fruitful in evaluating what is effective or detrimental for transgender employees and the organizational environment as a whole.

Finally, qualitative interview data on transgender employment in the public sector are almost nonexistent. Because the transitioning process is so personal, including more individual transgender employees in studies would provide greater depth and breadth in perspective, especially when comparing quantitative data by agency type and individual employee experience. This work is a first step in an ongoing dialogue among scholars and practitioners on these complex and exciting policy avenues, serving as a glimpse into the new policy directions that may take shape in the coming years.

## Appendix A

### FEVS Sexual Orientation and Gender Identity Responses.

Sexual orientation	FY 2012	FY 2013	FY 2014
EEOC monitored agencies	119	119	119
FEVS agencies	82	81	82
Federal workforce	2,110,221	2,067,262	2,045,707
Respondents to sexual orientation and gender identity question	609,006	332,607	349,380
Heterosexual or straight	87.00%	84.92%	84.58%
LGBT	2.23%	2.69%	2.82%
Prefer not to say	10.76%	12.38%	12.60%

Note. FEVS = Federal Employee Viewpoint Survey; FY = fiscal year; EEOC = U.S. Equal Employment Opportunity Commission; LGBT = lesbian, gay, bisexual, and transgender.

## **Appendix B**

### *Interview Questions*

Interview 1: Federal official charged with guiding employee transitions

1. What efforts is the federal government taking to construct sex transition policy?
2. What is the U.S. Equal Employment Opportunity Commission's (EEOC) role in creating sex transition policy in the federal government?
3. Are there any existing policies the federal government is using as a model for sex transition policy?
4. What agencies, if any, have formalized a sex transition policy?
5. Does the federal government keep data on transgender, LGBT (lesbian, gay, bisexual, transgender), and non-conforming employees? If so, how are these data collected and how often?
6. What is your position at the EEOC and role in crafting sex transition policy in the federal government?
7. Explain your experience in sex transition policy.
8. Are some cases of sex transition more or less challenging than others? If so, why and how?
9. What are the biggest challenges to creating sex transition policy? How can these issues be addressed?
10. How are federal agencies implementing a sex transition process, if at all?
11. What are the most significant challenges in implementing a sex transition policy? How can these issues be addressed?
12. What recommendations do you have for future sex transition policy?
13. How does current policy (or lack of policy) affect federal employees who are considering transition, plan to transition, or who have transitioned?
14. What are the most significant challenges transitioning or transgender federal employees face on both individual and organizational levels?
15. How can these challenges be remedied through formal policy or other means?
16. How does sex transition policy and practice affect other federal employees in the organization?
17. What specific recommendations do you have for managers, colleagues, and subordinates of transitioning and/or transgender employees?
18. What is the best way to define "transgender"?

19. How does sex transition policy relate to gender non-conformity and/or LGBT policy?
20. What do you believe the future of sex transition, gender non-conformity, and LGBT policy will look in the federal government?

Interview 2: Federal employee who transitioned while a member of the federal workforce

1. What agency do you work for and what is your position?
2. How long have you worked for this agency?
3. Did your agency have LGBT, transition, and/or gender non-conforming policy in place prior to your transition?
4. Are you aware of efforts in the federal government to construct sex transition policy?
5. What was the EEOC's role in your sex transition?
6. How did you make your agency aware that you planned to undergo a sex transition?
7. What was the reaction of your agency when learning that you would undergo a sex transition?
8. Explain your experience with coworkers during your sex transition process, specifically, human resources representatives, superiors, and/or colleagues.
9. What are the biggest challenges to creating sex transition policy? How can these issues be addressed?
10. What are the most significant challenges in implementing a sex transition policy? How can these issues be addressed?
11. What recommendations do you have for future sex transition policy?
12. What advice do you have for federal employees who are considering transition, plan to transition, or have transitioned?
13. How does current policy (or lack of policy) affect federal employees who are considering transition, plan to transition, or who have transitioned?
14. What are the most significant challenges transitioning or transgender federal employees face on both individual and organizational levels?
15. How can these challenges be remedied through formal policy or other means?
16. How do you think sex transition policy and practice affect other federal employees in your organization?
17. What specific recommendations do you have for managers, colleagues, and subordinates of transitioning and/or transgender employees?
18. What is the best way to define "transgender"?

19. How does sex transition policy relate to gender non-conformity and/or LGBT policy?
20. What do you believe the future of sex transition, gender non-conformity, and LGBT policy will look in the federal government?

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## **Notes**

1. It is important to note that not all federal agencies participate in the Federal Employee Viewpoint Survey (FEVS). Of the 119 executive agencies that the U.S. Equal Employment Opportunity Commission (EEOC) monitors, approximately 82 participated in the FEVS during the last 3 years. Among the notable agencies (and the size of their fiscal year [FY] 2013 workforce) that do not participate in this survey are the U.S. Postal Service (616,423), Tennessee Valley Authority (12,621), Federal Deposit Insurance Corporation (7,583), Securities and Exchange Commission (4,962), Federal Reserve Board (2,489), Farm Credit Administration (293), and the intelligence agencies. As a result, the survey did not reach approximately 644,371 out of 2,743,528 federal employees in FY 2013, which was nearly a quarter of the federal workforce.
2. See Appendix A. In FY 2012, the U.S. Office of Personnel Management (OPM) surveyed 1.6 million federal employees, and 609,006 answered the LGBT (lesbian, gay, bisexual, and transgender) question in the survey. Of the survey respondents who answered the sexual orientation question, 2.23% identified as LGBT, whereas 10.76% of the respondents chose not to identify their sexual orientation. Over the next 2 years, the percentage of LGBT respondents increased slightly from 2.69% of the 332,607 respondents in FY 2013 to 2.82% of the 349,284 respondents in FY 2014. Similarly, a greater percentage of the respondents did

- not identify their sexual orientation after FY 2012: 12.38% in FY 2013 and 12.60% in FY 2014. For each year that this question has been asked, more than 10% of respondents who answered this question selected the “I prefer not to say” response.
3. President Eisenhower’s 1953 Executive Order remained in effect until 1998, when President Clinton signed an Executive Order which made clear that discrimination based on an individual’s sexual orientation is prohibited in the federal government (Executive Order 13087, 1998). The Executive Order mandated that each Agency must establish its own process for sexual orientation claims; however, it did not give employees any enforceable rights or remedies. Similarly, President Obama signed an Executive Order on July 21, 2014, that added gender identity to the list of protected bases for federal contractors (Executive Order 13672, 2014).
  4. For the purposes of this work, “transgender” is defined as an umbrella term that can be used to describe people whose gender identity and/or expression is different from the sex assigned to them at birth (e.g., the sex listed on his or her birth certificate). The term “transgender woman” typically is used to refer to someone who was assigned the male sex at birth but who identifies as a female. Likewise, the term “transgender man” typically is used to refer to someone who was assigned the female sex at birth but who identifies as a male. A person does not need to undergo any medical procedure to be considered a transgender individual.
  5. Here, “sexual orientation” is defined as a person’s physical, romantic, or emotional attraction to people of the same or opposite sex. Sexual orientation is distinct from gender identity. A person’s gender identity does not have anything to do with attraction. For example, transgender individuals (just like cisgender individuals) may identify as gay, lesbian, bisexual, asexual, or straight.
  6. “Gender identity” is defined as an individual’s internal sense of being male, female, or some other gender (see “gender non-binary” below). Gender identity is generally determined in the early years of an individual’s life. Everyone has a gender identity.
  7. For example, the Commission found in *Veretto v. U.S. Postal Service* (2011) that the complainant’s allegation of sexual orientation discrimination was a claim of sex discrimination because it was based on the sex stereotype that marrying a woman is an essential part of being a man. Also see *Castello v. U.S. Postal Service* (2011), *Culp v. Department of Homeland Security* (2013), and *Complainant v. Department of Homeland Security* (2014).
  8. For example, the U.S. District Court for the District of Massachusetts found in *Centola v. Potter* (2002) that “sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women.” Also see *Heller v. Columbia Edgewater Country Club* (2002), *Koren v. Ohio Bell Telephone Co.* (2012), *Termeer v. Billington* (2014), and *Boutillier v. Hartford Public Schools* (2014).

9. The Commission also issued decisions on name and pronoun usage (*Jameson v. U.S. Postal Service*, 2013), name changes (*Complainant v. Department of Veterans Affairs*, 2014), and restroom usage corresponding to current gender (*Lusardi v. Department of Army*, 2015).
10. The employees are purposefully being kept anonymous due to the nature of the interviews.
11. I use the pronouns corresponding to the employee's gender identity post-transition throughout this article, "she," "her," "hers," though the employee is comfortable with more gender-ambiguous terms and repeatedly emphasizes that gender identity and gender expression are much more complex than the traditional female-male dichotomy that is typically used.
12. When asked to define key terms, this was her response: *Gender identity*: "what my inside tells me I am"; *Gender expression*: "how I present to the world"; *Sexual orientation*: "who do I love"; *Transgender*: "Where my inside and my outside are mismatched. When I think about myself, what is my internal talk? Is it primarily male or primarily female?"
13. She sees herself primarily as a non-binary gender—both and neither. Some of how she feels is feminine, some of how she feels is masculine. Her gender expression depends on what she is doing, and according to her, gender roles have to do with how you feel about what you are doing and how you feel about yourself.
14. U.S. Department of Interior's policy (<http://elips.doi.gov/ELIPS/0/doc/3815/Page2.aspx>).
15. A key example of this is North Carolina's 2016 Act to provide for Single-Sex Multiple Occupancy Bathroom and Changing Facilities in Schools and Public Agencies and to create Statewide Consistency in Regulation of Employment and Public Accommodations, also known as "House Bill 2" that bans individuals from using public restrooms that do not correspond to their biological sex assigned at birth. The U.S. Department of Justice declared this law in violation of Title VII and Title IX of the Civil Rights Act as well as the Violence Against Women Reauthorization Act of 2013.
16. Restroom and locker room access are often inappropriately analyzed by federal agencies and managers as a "request for a reasonable accommodation" from the transgender employee. The word "accommodation" is a legal term that is specific to the Rehabilitation Act and the Americans With Disabilities Act, where it applies only to individuals who have a disability, and to Title VII's religious accommodation requirement. When agencies and managers ensure equal access to a restroom or locker room, it is important to note that they are not "accommodating" that employee; instead, they are simply treating that employee the same as they treat every other individual of the sex with which that individual identifies.
17. The term "gender neutral restroom" is not appropriate to use because gender neutral is a gender identity. Instead, the more appropriate and most inclusive term that should be used is "all-gender restroom."
18. See Federman and Rishel Elias (2017) for a comparison of federal security agencies versus non-security agencies.

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### **Author Biography**

**Nicole M. Rishel Elias** is an assistant professor in the Department of Public Management at John Jay College of Criminal Justice, CUNY and co-founder of Women in the Public Sector at John Jay College. She regularly works with practitioners at the federal level. Dr. Elias was a Research Fellow at the U.S. Equal Employment Opportunity Commission Office and served as the Lead Faculty Advisor to the U.S. Office of Personnel Management on the 2016 Government wide Inclusive Diversity Strategic Plan.