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Submitted online to www.reginfo.gov/

Re: Comments by Immigrant Legal Resource Center (ILRC) on Form DS-11, 30-day Notice of Proposed Information Collection. Application for U.S. Passport

OMB Control Number 1405-0004

Dear Department of State:

I am writing on behalf of the Immigrant Legal Resource Center (ILRC) to comment on the Department of State's (DOS) 30-Day Notice of Proposed Information Collection: Application for U.S. Passport (DS-11)

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to the immigration law and processes.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits and proof of citizenship from both USCIS and DOS.

As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization.

The ILRC is also a leader in VAWA, U, and T immigration relief for survivors, coordinating taskforces and producing trusted legal resources including webinars, trainings, and manuals such as *The VAWA Manual: Immigration Relief for Abused Immigrants*, *The U Visa: Obtaining Status for Immigrant Victims of Crime* and *T Visas: A Critical Option for Survivors of Human Trafficking*.

I. Background on the Information Collection

This notice proposes the alteration of the passport application form to eliminate gender marker X, and to add a requirement that applicant indicate biological sex at birth, “M” male or “F” female. The government has made this proposed alteration pursuant to EO 14168 (Jan. 20, 2025). No rulemaking or analysis has preceded this Notice of Information Collection.

We note preliminarily that we requested the actual information collection form on seven occasions to the address directed in the Federal Register notice, [Passport-Form-Comments@State.gov](#).¹ We received no response to the request until the form was finally provided on February 28, 2025.

The delay in receiving a copy of the changed form is an obstacle to any effective notice and comment procedure. Both the Administrative Procedures Act (APA)² and the Paperwork Reduction Act (PRA)³ require a step-by-step process of giving the public information about changes so that effective notice and comment takes place.

The ILRC opposes the proposed changes on both procedural and substantive grounds

ILRC provides technical support for attorneys and non-profit programs who represent immigrants and U.S. citizens in most matters of immigration law including consular processing and passport applications. The proposed form will have a substantial impact on a large population of persons who will be assessed for passport eligibility. The process by which the DOS has promulgated these changes is wholly insufficient to engender meaningful notice and comment as envisioned by the Administrative Procedures Act and the Paperwork Reduction Act.

¹ The Notice Of Information Collection in the Federal Register instructs the public to email this Passport office address in order to obtain a copy of the information collection and supporting documents, see https://www.federalregister.gov/documents/2025/02/14/2025-02648/30-day-notice-of-proposed-information-collection-application-for-a-us-passport?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

² 5 U.S.C. § 551 et seq.

³ 44 U.S.C. § 3501 et seq.

Additionally, these changes present an elevated burden for applicants and adjudicators, which is not accounted for in the information collection. Finally, the purpose of these changes is insidious in nature and motivated by bigotry on the part of the Trump administration.

A. The underlying information collection instrument was only provided for review after seven requests were made to DOS to send it

The DOS failed to provide the underlying form that is the subject of this information collection in the Notice, but referenced an email address that the public could access to obtain a copy of the changed form. We requested the form on seven occasions from February 20, 2025, until February 28, 2025. We finally received a copy of the form on February 28, 2025. Without a timely sent copy of the proposed form and instructions, there is no meaningful public notice and comment process that the law requires. The public cannot review the actual changes without a copy of the form and access to the form should not be a prolonged obstacle course.

B. The Notice of Information Collection alters substantive requirements for eligibility for a passport and is a de facto rulemaking

A change in substantive policy or guidance which impacts eligibility should be preceded by a notice and comment rulemaking under the APA. The president does not make rules for agencies. Agencies should issue rules to implement such changes after considering impact and public notice and comment. The change of requiring individuals to indicate, and document, biological sex at birth creates a substantial and sometimes insurmountable burden on U.S. citizen applicants who, under applicable state laws, have a legally issued birth certificate indicating their correct gender, and not biological sex at birth. These individuals are U.S. citizens who will find themselves unable to obtain a passport and travel internationally. This change in form infringes on a basic right of all U.S. citizens.

Without a justifying rationale or consideration of the impact on individuals, the notice here would require all passport applicants to fill out their biographic information as M or F, their biological sex at birth. This would need to be supported by documentation showing sex at birth, although state-issued birth certificates may not indicate that information, or may contain inaccurate information.⁴ Further still, DOS has taken it upon itself to investigate and issue documents with an applicant's gender assigned at birth regardless of the information included on the application, which will result in non-uniform documentation for applicants who have identity documents with different gender markers. At best, this will cause inconvenience to applicants

⁴ In a recent example of how this change can impact applicants, a naturalization applicant in Ontario, California reported on February 25, 2025, that although they were going to be approved at their naturalization interview, the USCIS officer stated that they could not adjudicate the application because the applicant had indicated female on her naturalization application. Her birth certificate has been legally re-issued by the state after a court order and male was changed to female. The officer stated that the application would not be approved because of the Executive Order of January 20, 2025, until further guidance was forthcoming from the General Counsel's office. This type of delay and confusion will be the rule, rather than the exception, in these cases.

and, at worst, bar them from accessing vital systems or place U.S. citizens at increased risk of violence and harassment.⁵

C. The Notice does not provide a rational analysis of the practical impacts of the change on some U.S. citizens who may be unable to obtain a passport

There is no consideration of the practical impact of this change in the notice. State agencies, not the federal government, oversee birth certificate issuance. Many states currently allow individuals to amend their birth certificates to reflect their accurate sex or gender. This would mean that such individuals would lack the documentation this form would require to obtain a passport.⁶ In addition, the requirement that an individual list M or F who does not meet one of those biological definitions at birth, or does not have a birth certificate that reflects M or F at birth, would effectively mandate that applicants perjure themselves to complete the application. Some applicants cannot truthfully and accurately represent their gender when applying for a passport under these changed rules. Essentially, they must “willfully subscribe[] as true a[] material matter which [they] do[] not believe to be true,” in apparent violation of the federal perjury statute.⁷

At a minimum, any individual who, in accordance with state law, had a different gender on their birth certificate than one indicated at birth, or who has no gender indicated on a birth certificate, would require multiple legal steps and court hours to alter their birth certificate back to the original, should that even be possible.

In addition, persons who already filed a passport application are likely to find out that their application will not be processed if a gender marker X was indicated or the DOS questions whether the applicant is indicating the biological sex at birth. In other cases, DOS will simply issue a passport with whatever sex designation the DOS believes to be accurate based on their

⁵ See, for example, National Center for Transgender Equality, *2022 U.S. Trans Survey Early Insights Report*, “Twenty-two percent (22%) of all respondents reported being verbally harassed, assaulted, asked to leave a location, or denied services when they have shown someone an ID with a name or gender that did not match their presentation,” [2022 USTS Early Insights Report_FINAL.pdf](#).

⁶ See, for example, New York State, Department of Health, Gender Designation Corrections, https://www.health.ny.gov/vital_records/gender_designation_corrections.html describing process of changing gender on a birth certificate and noting, “When a gender designation is amended on a birth certificate, the original birth certificate and all other documents relating to the gender designation or name change will be retained in a sealed file. Only the amended birth certificate will be released upon future requests for a certified birth certificate.” See also, Commonwealth of Massachusetts, <https://www.mass.gov/how-to/amend-a-birth-certificate-for-sex-of-the-subject>. More than 30 states and the District of Columbia allow change of gender on a birth certificate. The process varies by state. See National Center for Transgender Equality, *Summary of State Birth Certificate Laws*, <https://transequality.org/sites/default/files/docs/resources/Summary%20of%20State%20Birth%20Certificate%20Laws%20Jan%202020.pdf>.

⁷ 18 U.S.C. § 1621.

internal records.

The only instructions issued by DOS on this to date are so vague that the applicant will have no idea what documents will actually be needed. The DOS issued some frequently asked questions on the change and only states that “certain documents” will assist an applicant to prove their biological sex at birth, with no further clarification.⁸ Holding applicants to an unrecognizable evidentiary burden effectively negates their access to U.S. passports and travel abroad.

D. The APA requires analysis, notice, and comment on a substantive change that impacts eligibility

Under the APA, an agency should provide an analysis to justify a rule change, and a notice and comment period should be allowed where the public can weigh in.⁹ The agency must review those comments before arriving at a final rule. None of those steps under the APA have taken place here. Since this notice of information collection impacts applicant’s eligibility standards for a passport, it is a substantive change that is tantamount to a rulemaking and should be subject to the APA requirements.

E. The PRA requires a 60-day and a subsequent 30-day notice and comment

In this Notice of Information Collection, DOS moved immediately to a 30-day notice, depriving the affected public of a meaningful opportunity to respond because the changes were never published in a 60-day notice.¹⁰ The PRA requires these comment periods.¹¹ A different proposed form that was previously put out for 60-day notice did not have this substantive change and received no comments. The notice and comment procedure should begin with the current notice as this is the first time the public are allowed to consider these significant changes.

At a minimum, under the PRA, any information collection should begin with a 60-day notice, which was bypassed here.

F. The Notice drastically underestimates the burden of time on the public and on the government

The notice states that the burden of time to complete this DS-11 would be 85 minutes. That estimate is not counting the many weeks, months, and years it could take an individual who has a birth certificate properly issued by their state that reflects their accurate gender, which differs from “biological sex at birth.” Individuals in this position will likely require extensive time to research the meaning of vague rules, and, in some instances, navigate through state agencies or

⁸ See DOS, Sex Marker in Passports (Feb. 11, 2025), <https://travel.state.gov/content/travel/en/passports/passport-help/sex-marker.html>.

⁹ 5 U.S.C. § 551 et seq.

¹⁰ The Federal Register notice describes a prior information collection which was published to effect a change that required an applicant to answer whether they were required to register as a sex offender in compliance with a new statute, 34 U.S.C. 21501, but that 60-day notice period did not contain the current change eliminating gender marker and requiring M or F at birth be indicated.

¹¹ 44 U.S.C. § 3506.

courts to obtain birth certificates or other documentation to reflect sex at birth. Since it is extremely unclear what documents DOS will require to prove “sex at birth” this change presents serious obstacles to both the passport applicant and the DOS adjudicator.

G. The change would not enhance the quality, clarity, or utility of the information collected

The change proposed by the notice does not enhance the quality of the information collected nor minimize the reporting burden on the public: in fact, it does the opposite. As described, many members of the public will face a prolonged process of searching for acceptable documents to prove “sex at birth” with no assurance that what they provide will suffice, since DOS has not listed any specific documents to prove this.

H. The proposed changes to this form are motivated by bigotry

The Trump administration has made no secret of its desire to eliminate the ability of transgender, nonbinary, and intersex individuals to obtain identity documents in their correct gender identity. Actions like the one contemplated in this notice, along with passport processing changes already in place at DOS,¹² create barriers to individuals who seek federal identity documents with accurate gender markers. These actions are derogatory and discriminatory in addition to posing a barrier to applicants where there will now be discrepancies between state-issued identity documents and federal identity documents. This is but one aspect of an administration choosing to sow chaos and confusion in lieu of governance in the name of efficiency and personal freedom. To enact such changes is not only arbitrary and capricious but deliberately harmful. DOS should rescind this proposed form and any related guidance.

II. Conclusion

For the above reasons, we oppose the change introduced by this Notice of Information Collection. This change represents an effort by the current administration to discriminate against transgender, nonbinary and intersex individuals and remove their ability to obtain a passport that reflects their correct gender identity. As such, DOS should not proceed with the changes contemplated in this notice. Generally, we urge DOS to undergo rulemaking in compliance with the APA, followed by a Notice of Information Collection with 60 and 30-day notice and comment under the PRA to allow public participation in this and any future changes to forms or policy. The changed form must also be made available on a timely basis to the public for review.

Sincerely,

Peggy Gleason
Senior Staff Attorney
Immigrant Legal Resource Center

¹² See U.S. Department of State, *Sex Marker in Passports*, <https://travel.state.gov/content/travel/en/passports/passport-help/sex-marker.html> (last updated Feb. 11, 2025).

