United States Conference of Catholic Bishops
Office of the General Counsel
3211 Fourth Street, NE
Washington, DC 20017
202.541.3300
usccb.org

Submitted Electronically

October 30, 2024

U.S. Department of Health & Human Services
200 Independence Ave., SW
Washington, DC 20201

Subj: Adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Dear Sir or Madam:

On behalf of the United States Conference of Catholic Bishops (USCCB), we respectfully submit the following comments on the interim final rule, published by the Department of Health and Human Services at 89 Fed. Reg. 80055 (Oct. 2, 2024), in the above-captioned matter.

In the interim final rule, on which it has requested comment, the Department proposes to interpret 13 various statutes[1] that prohibit sex discrimination "to include a prohibition against discrimination on the basis of sexual orientation and gender identity consistent with the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock*'s reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity." 2 C.F.R. § 300.300(c), set out at 89 Fed. Reg. at 80062. Section 300.300(c) purports to be "interpretive" and "does not impose any substantive obligations on entities outside the Department." *Id.*

The Department's decision to apply *Bostock* to the 13 statutes listed in section 300.300(c), in our view, is mistaken as a matter of law for several reasons.

First, the specific holding of *Bostock* concerns only Title VII of the Civil Rights Act of 1964, not other statutes. 590 U.S. at 649 (holding that "[a]n employer who fires an individual for being homosexual or transgender" violates the prohibition against sex discrimination set forth in Title VII); *id*. at 665 (using nearly identical language to describe the Court's holding); *id*. at 683 (same).

Second, *Bostock*'s holding is based on the Court's reading of the text of Title VII. *Id*. at 654-83. Textually, the statutes listed in section 300.300(c) bear no relationship to, indeed are quite dissimilar to, the text of Title VII, nor does the Department claim that there is sufficient textual similarity to warrant applying *Bostock* to the 13 statutes listed in section 300.300(c).

Third, the employer litigants in *Bostock* expressed a concern that a decision in favor of the

[1] The 13 statutes are cited, along with relevant text, in the Appendix accompanying this letter.

employees in that case would "sweep beyond Title VII to other federal … laws that prohibit sex discrimination." 590 U.S. at 681. Responding to that specific concern, the Court in *Bostock* cautioned that "none of these other laws are before us" and "we do not prejudge any such question today." *Id*. Nor did the Court "purport to address bathrooms, locker rooms, or anything else of the kind." *Id.* The application of *Bostock* to 13 non-Title VII statutes, without limitation to employment discrimination claims of the sort presented in *Bostock*, reads the Court's decision as if it decided the very questions that it expressly indicated it was *not* deciding.

Fourth, notwithstanding *Bostock*'s precise holding and the textual differences between Title VII and the 13 statutes listed in section 300.300(c), at no point does the Department explain why the reasoning of *Bostock* should apply to the 13 listed statutes. To be sure, section 300.300(c) refers to "other Federal court precedent" applying *Bostock* outside of Title VII, but neither the regulation nor the preamble cites any specific court decision, let alone a decision involving any of the 13 statutes listed in section 300.300(c).

Given the specific and limited holding of *Bostock*, the Court's reliance in *Bostock* on the particular wording of Title VII, the Court's caution in *Bostock* that it was only deciding a question presented under Title VII and not other federal statutes, the Department's failure to identify any textual similarity between Title VII and the 13 statutes listed in section 300.300(c), and the failure to identify any court decision that in fact applies *Bostock* to any of those statutes, we urge the Department to rescind section 300.300(c).

Finally, HHS states that it has good cause to dispense with notice and comment, citing 5 U.S.C. § 553. Good cause under section 553 by its terms, however, is limited to situations where notice and comment is "impracticable, unnecessary, or contrary to the public interest," a standard that, in our view, is not met here. As we have explained, *Bostock* does not support HHS's reading of the 13 statutes referenced in the interim final rule, and there is pending litigation that may further undermine an expansive reading of that case. *See, e.g.*, *United States v. Skrmetti*, No.23-477 (U.S.), a case, to be decided by the Supreme Court this Term, in which the parties and amici take differing positions on the question of *Bostock*'s application outside of Title VII. The rule therefore should have been issued as a proposed rather than interim final rule.

Respectfully submitted,

William J. Quinn
General Counsel

Michael F. Moses
Director, Legal Affairs

Appendix:
The 13 Statutes Listed in Section 300.300(c)

8 U.S.C. § 1522 (stating that "[a]ssistance and services funded under this section [relating to refugee assistance] shall be provided to refugees without regard to … sex").

42 U.S.C. § 290cc-33 (stating that "[n]o person shall on the ground of sex … be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded … with funds made available under section 290cc-21 of this title" relating to projects for assistance in the transition from homelessness).

42 U.S.C. § 290ff-1 (stating that a system of care under this section shall provide services for children with serious emotional disturbances "without discriminating against the child or the family of the child on the basis of … sex").

42 U.S.C. § 295m (stating that no grant shall be made to any school of the health professions in the absence of assurances that the school "will not discriminate on the basis of sex in the admission of individuals to its training programs").

42 U.S.C. § 296g (stating that no grant shall be made to any school of nursing in the absence of assurances that the school "will not discriminate on the basis of sex in the admission of individuals to its training programs").

42 U.S.C. § 300w-7 (stating that "[n]o person shall on the ground of sex … be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded … with funds made available under this part" relating to preventive health and health services).

42 U.S.C. § 300x-57 (stating that "[n]o person shall on the ground of sex (including, in the case of a woman, on the ground that the woman is pregnant) … be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded … with funds made available under section 300x or 300x-21 of this title" relating to mental health and substance abuse).

42 U.S.C. § 708 (stating that "[n]o person shall on the ground of sex … be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded … with funds made available under this subchapter" relating to maternal and child health services).

42 U.S.C. § 5151 (stating that the distribution of supplies, processing of applications, and other disaster relief and assistance activities "shall be accomplished in an equitable and impartial

manner, without discrimination on the grounds of … sex").

42 U.S.C. § 8625 (stating that "[n]o person shall on the ground of … sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded … with funds made available under this subchapter" relating to low-income home energy assistance).

42 U.S.C. § 9849 (stating that "[n]o person … shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter" relating to head start programs).

42 U.S.C. § 9918 (stating that "[n]o person shall, on the basis of … sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded … with funds made available under this chapter" relating to community services).

42 U.S.C. § 10406 (stating that "[n]o person shall on the ground of sex … be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded … with funds made available under this chapter" relating to family violence prevention and services. "Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal or safe operation of that particular program or activity").