(e) Address and telephone number of the physician;

(f) Language stating that he/she *has treated the applicant or reviewed and evaluated the medical history of* the applicant. He/she *also* has a doctor/patient relationship with the applicant;

(g) Language stating that the applicant has had appropriate clinical treatment for gender transition to the new gender (*specifying* male or female)*; and*

(h) Language stating "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct."

If your gender transition process is ongoing, a two year limited validity passport reflecting the new gender will be issued upon submission of the items above and a statement from your *licensed* physician that you are in the process of gender transition.

If we do not receive the requested information within ninety (90) days or the information you submit is insufficient to establish your gender transition, your passport will be issued in your birth gender. If you prefer you may withdraw your application. By law, passport fees are not refundable. Any special return postage will be returned or refunded.

Sincerely,

[Signature]

[Name]

[Title]

[Name of Passport Issuing Office]

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7 FAM 1320 APPENDIX M EXHIBIT B MODEL LETTER FOR LICENSED PHYSICIAN CERTIFYING TO THE APPLICANT'S GENDER CHANGE

(CT:CON-351; 01-20-2011)

Licensed Physician's Letterhead
(Physician's Address and Telephone Number)

I, (physician's full name), (physician's medical license or certificate number), (issuing *U.S.* State/*Foreign Country* of medical license/certificate), (DEA Registration number *or comparable foreign designation*), am the physician of (name of patient), with whom I have a doctor/patient relationship *and whom I have treated (or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated).*

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

Or

(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician

Typed Name of Physician

Date

ARCHIVE COPY

TO: Brenda S. Sprague, Deputy Assistant Secretary for Passport Services

FROM: Harper Jean Tobin, Director of Policy
National Center for Transgender Equality

DATE: September 9, 2013

RE: **Recommended Revisions to 7 FAM 1300 Appendix M, Gender Change**

We greatly appreciate the State Department's work to adopt and implement a modernized policy for changing listed gender on passports, including making further updates to the policy in 2011, and working with our organizations to troubleshoot implementation issues. Based on our observation and study of community experiences with State's current policy, as well as the experiences of other state and federal agencies, we recommend a number of further updates intended to improve the efficiency and accessibility of the process for changing gender markers. As our knowledge about the needs and lives of transgender people continues to develop, and as federal and state agencies continue to improve their knowledge and experiences in addressing these issues, we believe it important that policies and procedures continue to evolve.

This memorandum summarizes several key aspects of current policy and procedures, and offers suggestions for improvements based on observations of the success of other agency policies, and on direct feedback from the transgender community, in order to recognize and try to ameliorate these issues. Our recommendations are intended to help improve the efficiency, accessibility, and equity of the Department's policy and procedures.

I. Licensed Physician Requirement

The Department should accept certifications from the full range of licensed health care providers who are qualified to assess and provide treatment under the Standards of Care. The Standards of Care repeatedly emphasize that, "For individuals seeking care for gender dysphoria, a variety of therapeutic options can be considered. The number and type of interventions applied and the order in which these take place may differ from person to person."[1] The Standards state qualified mental health providers "are best prepared" to assess and diagnose gender dysphoria,[2] and that qualified mental health providers can include those with clinical training in "psychology, psychiatry, social work, mental health counseling, marriage and family therapy, nursing, or family medicine with specific training in behavioral health and counseling."[3] This same range of qualified mental health providers may provide appropriate clinical treatments including psychotherapy. Other treatments, such as hormone therapy, "can be managed by a variety of providers, including nurse practitioners and primary care physicians."[4] Licensed non-physician mental health providers are in many cases the primary providers and coordinators of

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[1] World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, Seventh Edition, 9 (2011), available at http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf.
[2] *Id.* at 24.
[3] *Id.* at 22.
[4] *Id.* at 41.

care for people undergoing gender transition, and are therefore often the most appropriate professionals to provide certification. Particularly for transgender people of limited means, access to professional assistance and guidance during transition may be limited to clinical social workers accessible to them through free clinics and other community agencies. Transgender people who receive medical care at community clinics are also frequently treated by nurse practitioners or physicians' assistants – who in many states are licensed to prescribe medications – instead of medical doctors.

These licensed healthcare professionals are bound by the same ethical responsibilities as physicians, and should be subject to the same requirements that ensure the integrity of provider certifications of gender change. All healthcare professionals would be required to provide (1) a certification on office letterhead, (2) with their professional license number, (3) signed under penalty of law, (4) stating that the provider has a professional provider/patient relationship with the applicant, and further stating (5) that the provider has treated the applicant or reviewed their relevant medical history, and (6) has determined that the applicants has had appropriate clinical treatment for gender transition. These requirements ensure all certifying providers are professionally and legally accountable for the information they submit and establish an adequate audit trail.

Permitting certifications from licensed non-physician providers is particularly important because many transgender people do not have regular access to a doctor – and those who do often find it much more difficult to discuss transgender-related issues with their doctor than with a mental health provider. A study published last year in the *American Journal of Public Health* found that 40% of transgender Virginians did not have a primary care doctor – and of those who did, 29% were not out to that doctor.[5] Other studies have also found that as many as 30-40% of transgender people do not have a primary care physician,[6] and many who do have doctors are not out to their doctor regarding their transgender status.[7] Because transgender people have disproportionately low incomes,[8] and rely disproportionately on community clinics,[9] they are more likely to have access to non-physician medical and mental health providers than to physicians.

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[5] Bradford, J. Reisner, S. L., Honnold, J. A. & Xavier, J. (2012). Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study. *American Journal of Public Health*, Published online ahead of print Nov. 15, 2012, e1-e10); see also XAVIER, J. M., BRADFORD, J., & HONNOLD, J., *THE HEALTH, HEALTH-RELATED NEEDS, AND LIFECOURSE EXPERIENCES OF TRANSGENDER VIRGINIANS*, RICHMOND, VA: VIRGINIA DEPARTMENT OF HEALTH (2007) (presenting additional data from the same survey).

[6] Kenagy G., Bostwick W. (2005), Health and Social Service Needs of Transgendered People in Chicago. *Int. J. Transgenderism*, 8(2/3):57-66 (28% of sample did not have a doctor); Kenagy, G. P. (2005), The Health and Social Service Needs of Transgender People in Philadelphia, *International Journal of Transgenderism*, 8(2-3):49-56 (38% of sample did not have a doctor); Xavier J, Bobbin M, Singer B, Budd E., A needs assessment of transgendered people of color living in Washington, DC. *International Journal of Transgenderism*, 2005; 8(2/3): 31–47 (40% of sample did not have a doctor).

[7] GRANT, JM, ET AL., *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY*, WASHINGTON, DC: NATIONAL CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE (2011) (33% of respondents had only come out to a few medical providers, while 21% were out to none);

[8] *Id.* at 22 (15% of respondents in a national survey reported making under $10,000 per year, nearly four times the rate of this income category for the general population).

[9] *Id.* at 73 (28% of respondents relied on community health centers or clinics for primary care; 4% relied on emergency rooms).

At least 16 states currently permit change of a gender designation on a driver's license or state ID based on certification by a licensed non-physician healthcare professional. Many of these states permit any of a range of licensed providers to complete the required certification, including nurse practitioners, physician assistants, psychologists, and clinical social workers — all licensed professions with professional oversight boards and ethical codes. According to our research (summarized in Appendix A):

- At least 16 states and the District of Columbia accept certifications from *psychologists*;
- At least 12 states and the District of Columbia accept certifications from *clinical/psychiatric social workers*;
- At least seven states and the District of Columbia accept certifications from *nurse practitioners*; and,
- At least six states and the District of Columbia accept certifications from *physician assistants*.

Permitting licensed non-physician healthcare providers to complete gender change certifications would better comport with contemporary standards of care and make the process more accessible to transgender people, particularly those who are low-income or live in geographically remote or resource-poor areas. At a minimum, we recommend that the Department accept certifications from independently licensed *physicians*, *nurse practitioners*, *physician assistants*, *psychologists*, and *clinical/psychiatric social workers*.

II. Provider DEA Registration Number Requirement

While most of the data elements currently required for provider certifications are necessary and appropriate, providers' Drug Enforcement Administration (DEA) registration numbers should not be required. This use of DEA numbers is contrary to their purpose as defined by the DEA, and is sometimes resisted by providers. The legal purpose of DEA numbers is to track the prescription of controlled substances, not to be used to otherwise monitor the activities of physicians. Physicians may be wary of supplying their DEA registration numbers for purposes other than prescribing medications due to fears of drug diversion or putting themselves at risk for possible unauthorized use of their DEA numbers. The requirements for a provider's office letterhead, professional license number, and signature under penalty of law are more than sufficient to prevent fraud and ensure legitimacy.

Nearly every state has procedures for gender change on driver's licenses and birth certificates, and in many states certifications by physicians or other health care providers are accepted as proof of gender change. Yet *no* state requires such certifications, for *either* driver's licenses or birth certificates, to include a DEA registration number. In June 2013, the Social Security Administration updated its gender change policy to mirror the Department's policy in many respects, but decided not to require providers to submit a DEA registration number.[10] The successful use by these state and federal agencies of gender change procedures that do not rely on collecting DEA registration numbers demonstrates that it is feasible and preferable for the Department to eliminate this data requirement for provider certifications.

[10] SSA POMS, RM 10212.200 Changing Numident Data for Reasons other than Name Change, https://secure.ssa.gov/poms.nsf/lnx/0110212200 (accessed June 20, 2013).

III. Eliminate the Issuance of Provisional Passports for Gender Change

The issuance of provisional passports reflecting gender change is a holdover from the era when the Department required proof surgical treatment to document gender transition. Recognizing that many people needed to use their passports precisely to travel abroad for such surgery, the former policy contained an exception easing the surgical requirement for those cases where an applicant had a date scheduled for surgery.[11] Since 2010, however, the Department has recognized that, "The number and type of interventions applied and the order in which these take place may differ from person to person."[12] Today's Standards of Care recognize that what is appropriate treatment for one patient may not be for another; and that a specific, tailored course of treatment may be appropriate for a patient at one point in time, even though additional treatment might be appropriate at a later time. Accordingly, the Department does not require or seek evidence of any specific form or extent of treatment, leaving the determination of appropriate treatment instead to providers and patients. In this context, we have found that distinguishing between individuals who "have had appropriate clinical treatment" and those who "are in the process of gender transition" is more confusing than helpful.

In our experience, this two-tiered approach has tended to be confusing for applicants, health care providers, and passport agents alike. Because of the two-tiered approach, many applicants, providers, and agents mistakenly believe that there is still a surgical requirement to obtain a full ten-year passport with the correct gender. In some cases, we have found that providers, attempting to divine the meaning of this bifurcated system, refuse to write letters stating that an applicant has had appropriate clinical treatment for gender transition if there is a possibility that the individual will need additional treatment, including surgery, in the future. While many providers understand the current policy better now than they did in 2010, confusion still exists. The distinction between two different forms of required language also makes the policy more difficult to understand for passport agents who only see applications involving gender changes occasionally. Finally, the need to reapply after just two years creates an unnecessary paperwork burden on both passport-holders and the government.

We are aware of no other federal agency, or any state vital records agency, and only a handful of state motor vehicle agencies that use this type of bifurcated approach. The experience of other agencies indicates that this bifurcation is unnecessary, and in our experience it is burdensome and confusing. We recommend that the Department simply issue full validity ten-year passports based on certification that an individual has had appropriate clinical treatment for gender transition, or on other documentary evidence as discussed below.

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[11] Carmen A. DiPlacido, Acting Deputy Assistant Secretary, Passport Services, Memo to All Regional Directors, Office Directors, and Passport Services Staff, "Procedures for Handling Requests for a Change of Gender in Passports" (Oct. 1, 1992).

[12] World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, Seventh Edition, 9 (2011), available at http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf.

IV. Alternative Forms of Acceptable Evidence

Other federal and state agencies routinely accept other forms of state or federal identification as an alternative to a provider certification of gender change. This simplifies the process of updating multiple documents by limiting the number of times an individual must provider a provider certification. While other agencies have standards similar to, or stricter than, the Department's requirements for provider certifications, minor technical differences in agency policies or gaps in time may mean that individuals would otherwise be required to make multiple efforts to obtain provider certifications for different agencies.

Among federal agencies:

- U.S. Citizenship and Immigration Services will accept a provider certification similar to that required by the State Department, or alternatively will accept an *amended birth certificate*, *passport*, or *court order* recognizing the new gender.[13]
- The Office of Personnel Management will accept a *passport* or any *otherwise acceptable evidence of identity* reflecting the new gender as an alternative to a provider certification.[14]
- The Veterans Health Administration will accept an *amendment birth certificate*, *court order*, or *passport* in lieu of a provider certification.[15]
- The Social Security Administration will accept a state-issued *birth certificate* or *court order* recognizing the new gender in lieu of a provider certification.[16]

The Department's policy on gender change has been revised several times since 2010, and at times has permitted amended birth records showing the new gender as an alternative form of evidence of gender change. Currently, the FAM states that an amended birth certificate is not acceptable evidence of gender change, and a provider certification is the only acceptable form of evidence. The Department should revise the current policy to accept government-issued documents recognizing the new gender as an alternative form of acceptable evidence of gender change, including, at a minimum, amended birth certificates, court orders, and naturalization certificates. This approach is readily administrable, proven, and saves effort for individuals and the agency in cases where adequate documentation already exists.

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[13] U.S. Citizenship and Immigration Services (USCIS), Adjudicator's Field Manual, Ch. 10.22 Document Issuance Involving Status and Identity for Transgender Individuals (Amended 8/10/2012; PM-602-0061.1. Added 4/10/2012; PM-602-0061. AD12-02), available at http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/Chapter10-22.html.

[14] The Guide to Personnel Recordkeeping, Office of Personnel Management, June 1, 2011 available at http://www.opm.gov/feddata/Ch4_ReconstructPersonnelFolder.pdf.

[15] Veterans Health Administration Directive 2013-003, Providing Healthcare for Transgender and Intersex Veterans (Feb. 8, 2013), available at http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863.

[16] SSA POMS, RM 10212.200 Changing Numident Data for Reasons other than Name Change, https://secure.ssa.gov/poms.nsf/lnx/0110212200 (accessed June 20, 2013).

V. Renewal by Mail

Submitting an application involving gender change can be a source of tremendous anxiety for transgender people. Most transgender people have had many experiences of being harassed, ridiculed, abused, or discriminated against because of their transgender status – in fact, more than one in four report having been the victim of bias-related physical assault at some point in their lives.[17] Transgender people are acutely aware of a history of discrimination by government officials, and nearly one in three respondents (32%) in the National Transgender Discrimination Survey reported having had at least one experience of being harassed, disrespected, or treated unequally by a government official.[18] Notwithstanding the Department's laudable efforts to train personnel and address problematic incidents, transgender people have good reason to be apprehensive about insensitive treatment by passport agents, security staff, or other customers at passport acceptance facilities. For these reasons, a renewal-by-mail option would provide significant relief for many passport-holders who are making a gender transition.

Several federal and state agencies routinely process requests for gender change on identifying documents and records by mail. US Citizenship and Immigration Services generally permits applications for a replacement employment authorization document (EAD) reflecting a gender change to be submitted by mail in the same manner as a name change. The Social Security Administration also permits gender changes to SSA records to be processed by mail using the standard Application for a Social Security Card. To the best of our knowledge, no state vital records agency requires gender change applicants to be made in person. These state and federal practices demonstrate that for a wide range of identifying documents and records, including photo identification documents, gender change applications can be effectively processed by mail.

In general, the Department permits any individual 16 or older who can submit an undamaged passport issued within the last 15 years to apply for a renewal by mail. The Department does not have any published policy outlining exceptions to this general policy of permitting renewals by mail. The Department's website does state that a passport may cease to be accepted "if your appearance has changed significantly or if you cannot be identified from the photo in your current passport," and gives the examples of "significant facial injury or trauma," "add[ing] or remov[ing] numerous/large facial piercings or tattoos," and "a significant amount of weight loss or gain," as well as gender transition.[19] Unlike the other examples listed here, gender transition typically will not involve or result in a change in facial features so substantial as to make it impossible to identify the individual. Except for the small minority of transgender women who undergo facial feminizing surgery,[20] changes in facial appearance are no different from those ordinarily caused by changes in grooming, hairstyle, aging, or modest weight loss or gain that are unrelated to gender transition. Accordingly, there is no reason why the Department

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[17] GRANT ET AL., *INJUSTICE AT EVERY TURN*, at 80.
[18] *Id.* at 130-33.
[19] U.S. Dept. of State, "Passport Photo Requirements," http://travel.state.gov/passport/pptphotoreq/pptphotoreq_5333.html (accessed July 19, 2013).
[20] Just 17% of transgender women in the National Transgender Discrimination Survey reported having had any form of transition-related facial surgery. Facial surgery for transgender men is even rarer and was not reported in the survey. GRANT ET AL., *INJUSTICE AT EVERY TURN*, at 79.

should not be able to process a renewal by mail for applicants who have made a gender transition, using a new photo submitted with the Form DS-82. Additionally, because gender is not remotely akin to a unique identifier – there are currently only two designations, and about half of passport-holders have each one – the likelihood that gender change applications will be, or even *could* be, used to facilitate fraud is negligible.

VI. Conclusion

We once again thank the Department for their continuing dedication to fairness for transgender passport-holders and look forward to working with you on making further improvements. We believe that the implementation of our suggestions will offer many advantages, and will not only better protect the rights of transgender people, but also increase administrative efficiency by further streamlining the passport application process for transgender Americans. Our detailed recommendations for revising the Foreign Affairs Manual section on gender change are presented in Appendix B.

APPENDIX A
STATES PERMITTING CERTIFICATION OF GENDER CHANGE BY NON-PHYSICIAN LICENSED HEALTHCARE PROFESSIONALS

State	Licensed professionals who may certify gender change	Source
Alaska	• Physician • Social worker • Psychologist • Professional counselor • Physician assistant • Nurse practitioner	Alaska DMV Form 427, Certification for Change of Sex Designation on Driver License or Identification Card, http://doa.alaska.gov/dmv/forms/pdfs/427.pdf
California	• Physician • Psychologist	Form DL-329, Medical Certification and Authorization (Gender Change), http://www.dmv.ca.gov/forms/dl/dl329.pdf
Delaware	• Physician • Therapist/counselor • Social worker	Form MV2020 - Request for Gender Change on Driver License/ Identification Card. http://www.dmv.de.gov/forms/driver_serv_forms/pdfs/gender_change_request_form.pdf
District of Columbia	• Physician • Therapist/counselor • Social worker • Other medical or social service provider	Gender Designation form, http://dmv.dc.gov/sites/default/files/dc/sites/dmv/publication/attachments/Gender_Change_Policies.pdf
Hawaii	• Physician • Nurse practitioner • Physician assistant • Psychologist • Social worker • Licensed counselor • Marriage and family therapist	Gender Designation Form, http://acluhawaii.files.wordpress.com/2012/07/gender-designation-form2.pdf
Maine	• Physician • Therapist/counselor • Social worker • Other medical or social service provider	Gender Designation Form, http://www.maine.gov/sos/bmv/licenses/GENDER%20DESIGNATION%20FORM.pdf
Massachusetts	• Physician • Therapist/counselor • Psychiatric social worker	Gender Designation Change Form, http://www.massrmv.com/rmv/forms/21816.pdf
New Jersey	• Physician • Therapist/counselor • Social worker • Other medical or social service provider	Declaration of Gender Designation Change Form, http://www.state.nj.us/mvc/pdf/Licenses/genderchange.pdf

New Mexico	• Physician • Therapist/counselor • Psychiatric social worker • Other medical or social service provider	Form MVD 10237, Gender Designation Change Request, http://www.mvd.newmexico.gov/SiteCollectionDocuments/assets/Mvd10237.pdf
New York	• Physician • Psychologist	http://nysdmv.custhelp.com/app/answers/detail/a_id/405
Ohio	• Physician • Psychologist/licensed therapist	Form BMV 2369, Declaration of Gender Change
Oregon	• Physician • Licensed psychologist/therapist	Oregon Driver License Procedure Manual, Ch. 18-05, Change of Sex
Pennsylvania	• Physician • Licensed therapist/counselor • Social worker	Form DL-32, Request for Gender Change on Driver's License/ Identification Card, http://www.dmv.state.pa.us/pdotforms/dl_forms/DL-32.pdf
Rhode Island	• Physician • Licensed therapist/counselor • Social worker	Gender Designation Form, http://www.dmv.ri.gov/documents/forms/license/gender_designation.pdf
Vermont	• Physician • Psychologist	http://dmv.vermont.gov/sites/dmv/files/pdf/DMV-Change_of_Gender.pdf
Virginia	• Physician • Nurse practitioner • Psychologist • Social worker • Professional counselor	Form DL 17, Gender Change Request, http://www.dmv.state.va.us/webdoc/pdf/dl17.pdf
Washington State	• Physician • Psychologist • Professional counselor • Physician assistant • Nurse practitioner	Form DR-500-043, Change of Gender Designation Request, http://www.dol.wa.gov/forms/500043.pdf

APPENDIX B
RECOMMENDED REVISIONS TO
FOREIGN AFFAIRS MANUAL

7 FAM 1300 APPENDIX M

GENDER CHANGE

[ ]

(Office of Origin: CA/OCS/L)

7 FAM 1310 APPENDIX M SUMMARY

[ ]

a. This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport. b. This policy explains the need for medical certification from a licensed ~~physician~~ healthcare provider who has treated the applicant or reviewed and evaluated the medical history of the applicant regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA).

c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.

d. Sexual reassignment surgery is not a prerequisite for passport issuance based on gender change.

e. Medical certification of gender transition from a licensed ~~physician~~ healthcare provider as described in 7 FAM 1320 Appendix M is the only documentation of gender change required. Other medical records are not to be requested. If a passport specialist or consular officer has questions about this guidance or a particular case, see 7 FAM 1370 Appendix M.

f. A DS-11 "Application for U.S. Passport" must be used initially as a change in gender is a change in the identity and the name of the applicant and identification in the new gender is required.

7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH FORM DS-11 PASSPORT APPLICATION

[ ]

a. Requirements for all elements of the Form DS-11 passport application aside from gender still apply, including:

(1) Evidence of U.S. citizenship/nationality. The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 "Acquisition and Retention of U.S. Citizenship and Nationality".) The applicant is not required to obtain an amended birth record, amended Consular Report of Birth (CRBA), or to request that the U.S. Citizenship and Immigration Services (USCIS) issue a replacement Certificate of Naturalization/Citizenship reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;

(2) Evidence of identity. As with all applications, the applicant must be asked to submit acceptable evidence of identity in the new gender and name, if available. (See 7 FAM 1320 "Identity of the Passport Applicant".) However, state law and foreign laws vary as to whether a driver's license or other State government form of identity document may be issued reflecting a gender change. If evidence of change of gender in the identity documents is not obtainable because of state or local requirements, the passport may still be issued in the new gender based on the combination of medical certification outlined below in paragraph b(1)(f) and the previous identity document with the former gender;

NOTE: Some form of photographic identification must be presented; you cannot use the doctor's statement as the only evidence to identify an applicant.

(3) Photograph. A recent photograph that reflects a good likeness of the applicant, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance (see also 7 FAM 1300 Appendix E "Passport Photographs");

(4) Passport Fee. All necessary passport fees must be submitted (see 7 FAM 1300 Appendix G "Passport Fees");

(5) Name Change. If the applicant's name has been changed, either by court order or through exclusive use for five years, he/she must present satisfactory evidence of the legal name change. Adjudication of the name change must be handled as a routine request and conform to the requirements of 7 FAM 1300 Appendix C "Names to Be Used in Passports".

b. Medical Certification Accepted for Gender Change/Transition.

(1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed original statement, on office letterhead, from a licensed ~~physician~~ healthcare provider who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant.

NOTE: Such licensed ~~physicians~~ healthcare providers include physicians (Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.)), nurse practitioners, physician assistants, psychologists, and clinical/psychiatric social workers. ~~The physicians may specialize in various medical fields, including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.~~

Statements from persons who are not licensed ~~physicians~~ healthcare professionals as listed above, such as ~~psychologists, nurse practitioners,~~ unlicensed counselors or health practitioners, chiropractors, and pharmacists, are not acceptable.

The statement must include the following information (See 7 FAM 1300

Appendix M Exhibit 1):

(a) ~~Physician's~~ Healthcare provider's full name;

(b) Medical license or certificate number;

(c) Issuing state, country, or other jurisdiction of medical license/certificate;

~~(d) Drug Enforcement Administration (DEA) registration number assigned to the doctor or comparable foreign registration number, if applicable;~~

~~(i) If the U.S. based licensed physician does not provide a DEA number, you must request that this be provided in a new statement. If the statement with the DEA number is not provided after an appropriate period of time (generally 90 days), the application must be denied.~~

~~(ii) Licensed physicians in foreign countries might not have a DEA number, but might have a comparable foreign registration number. For all foreign licensed physician gender change requests, domestic passport agencies/centers must scan copies of the application and attach all submitted documents to Passport Services' Adjudication Policy Division (CA/PPT/S/A/AP) at CA-PPT-Suggestion-Box@state.gov. CA/PPT/S/A/AP workswith the Overseas Citizens Services' Office of Legal Affairs (CA/OCS/L) to verify the bona fides of the foreign physician with the applicable post abroad.~~

~~(iii) Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.~~

(e) Address and telephone number of the ~~physician~~healthcare provider;

(f) Language stating that he/she has treated the applicant or has reviewed and evaluated the medical history of the applicant and that he/she has a ~~doctor~~provider/patient relationship with the applicant;

(g) Language stating the applicant has had appropriate clinical treatment for gender transition to the new gender of either male or female; and

(h) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."

~~(2) A two year limited validity passport reflecting the new gender will be issued upon presentation of the following:~~

~~(a) Information listed in paragraph 1(a)-(f) above;~~

~~(b) Language stating the applicant is in the process of gender transition to the new gender of either male or female; and~~

~~(c) Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."~~

c. Adjudication Actions.

(1) The passport specialist or consular officer will annotate the application "gender change" (in the "For Issuing Office Only" block of the DS-11) to record the reason for issuing the full validity passport in the new gender.

NOTE: Passport specialists and consular officers must not ask for additional specific clinical details regarding the gender change from the applicant.

~~(2) The passport specialist or consular officer will annotate the application "gender transition" (in the "For Issuing Office Only" block of the DS-11) to record the reason for issuing the limited validity passport in the new gender. When limited passports are issued in these cases:~~

~~(a) Use endorsement code 46 for domestic and Overseas Photodigitized Passports (OPDP) issuance. Annotate the application "gender transition" to record the reason for the limited validity book in the new gender. (See 7 FAM 1300 Appendix B "Endorsements" for appropriate code.)~~

~~(b) Use endorsement code 109 in Emergency Photodigitized Passports (EPDPs) for urgent overseas cases where the applicant must travel immediately. Limit the EPDP to three months. (See 7 FAM 1300 Appendix B for appropriate code.)~~

~~(3) An applicant will receive a passport for the remaining full validity period without further fee (except for expedited service), if:~~

~~(a) He/she applies for the new passport within two years of issuance using Form DS-5504, Application for a U.S. Passport (Name Change, Data Correction, and Limited Passport Book Replacement); and~~

~~(b) Meets the requirements of 7 FAM 1320 Appendix M paragraph a and 7 FAM 1320 Appendix M paragraph b(1).~~

~~(c) You must use endorsement code 3 (see 7 FAM 1300 Appendix B for appropriate code) in all gender change replacement books.~~

~~Example (for an adult):~~

~~The issuance date of the limited passport is "July 31, 2010." The issuance date in the new full validity passport will be automatically assigned by TDIS.~~

~~However, the issuance date is placed in endorsement code must be that of the original, limited passport - "July 31, 2010."~~

~~The expiration date listed in the endorsement must be ten years from the issuance date of the original, limited validity passport book, minus one day - "July 30, 2020".~~

(4) If the applicant has not submitted the requested medical certification, use the appropriate letter (or similar language for overseas posts) available in Information Request Letter (IRL) 706 in corresponding with the passport applicant. (See 7 FAM 1300 Appendix T "Information Request Letters and Information Notices".)

~~(5) If, after two years, the applicant applies for a new passport and gender transition has not been completed, the applicant must submit a new physician's statement, following the same information and licensure requirements in 7 FAM 1320 Appendix M, paragraph b (1) above, reflecting that the applicant still is in the process of gender transition. Another two year validity passport will be issued.~~

(6) If an applicant is renewing his/her passport, but is applying for the renewal in a new gender, the applicant ~~must~~ may use Form DS-~~11~~82, and submit medical certification, including all elements previously stated in listed in 7 FAM 1320 Appendix M paragraph b. An amended birth certificate or naturalization certificate in the new gender, or a court

order recognizing the new gender. is ~~not~~ acceptable alternative evidence to issue the passport in the new gender.

(7) If an applicant who already has been issued a passport in a new gender requests issuance of a passport in the birth gender, a certification under penalty of perjury from a licensed ~~physician~~ healthcare provider who has treated the applicant or reviewed and evaluated the medical history of applicant for transition back to the birth gender, is required. The statement must include all the elements previously stated in 7 FAM 1320 Appendix M paragraph b(1).

7 FAM 1330 APPENDIX M CONVERSATIONS WITH PASSPORT APPLICANTS SEEKING TO DOCUMENT GENDER TRANSITION

[ ]

a. As with all passport applicants, you must be sensitive and respectful at all times.

b. Refer to the applicant by the pronoun appropriate to his/her new gender.

c. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant.

7 FAM 1340 APPENDIX M AMENDING GENDER IN REPORTS OF BIRTH

[ ]

The Form FS-240, Consular Report of Birth Abroad of Citizen of the United States of America, can be amended by the Vital Records Section of Passport Services (CA/PPT/S/TO/RS/VR) to reflect the change in gender. The same documentary requirements specified above for passport services would pertain to amending gender in a Form FS-240. (See 7 FAM 1440, Consular Report of Birth Abroad of a Citizen/Non-Citizen National of the United States of America.) Inquirers should be directed to Passport Services' Vital Records Section.

Contact …

U.S. Department of State

Passport Services

Vital Records Section

1111 19th Street, NW, Suite 510

Washington, DC 20522-1705

(202) 955-0307

7 FAM 1350 APPENDIX M INTERSEX CONDITIONS (DISORDERS OF SEX DEVELOPMENT)

[ ]

a. "Intersex" is a condition in which a person is born with a reproductive or sexual anatomy and/or chromosomal pattern that does not fit typical definitions of male or female.

b. Birth documentation is often not updated to reflect corrected gender. The applicant, or his/her applying parents in the case of a minor child, must provide a statement from a licensed ~~physician~~ healthcare provider who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant. The statement must include all the information required in 7 FAM 1320 Appendix M paragraph b(1), adjusting the language to reflect the intersex condition and specify the gender correction to either male or female. In the case of a minor child, the applying parent also must submit a signed statement confirming the gender correction to either male or female.

c. Unless the applicant, or his/her applying parent, provides the statements described above, the gender listed on his/her birth documentation will determine the gender to be listed in the passport.

7 FAM 1360 APPENDIX M GENDER ERRORS IN ORIGINAL BIRTH CERTIFICATE

[ ]

a. If an applicant advises that the gender on his/her birth document mistakenly lists the wrong gender due to typographical error, and there is sufficient time before the listed departure date, refer the applicant to the appropriate issuing vital records office to have the error corrected.

b. If the departure date is imminent, you may issue a limited one year validity passport using endorsement code 46 (see 7 FAM 1300, Appendix B.) A corrected certified copy of the birth document will be required before issuance of a full validity passport.

7 FAM 1370 APPENDIX M QUESTIONS

[ ]

a. Passport agencies and centers must contact CA-PPT-Adjudication-SuggestionBox@state.gov for specific guidance.

b. U.S. embassies and consulates must contact Ask-OCS-L@state.gov for specific guidance.

7 FAM 1380 APPENDIX M AND 1390 APPENDIX

M UNASSIGNED

7 FAM 1300 Appendix M Exhibit 1

MODEL LETTER FOR LICENSED ~~PHYSICIAN~~ HEALTHCARE PROVIDER CERTIFYING TO THE APPLICANT'S GENDER CHANGE

[ ]

Licensed ~~Physician's~~ Healthcare Provider's Letterhead

(~~Physician's~~ Healthcare provider's Address and Telephone Number)

I, (~~physician's~~ healthcare provider's full name), (~~physician's~~ healthcare provider's ~~medical~~ professional license or certificate number), (issuing U.S. State/Foreign Country of medical license/certificate), ~~(DEA Registration number or comparable foreign designation),~~ am a licensed (physician, nurse practitioner, physician assistant, psychologist, or clinical/psychiatric social worker).

I am the ~~physician~~ healthcare provider of (name of patient), with whom I have a ~~doctor~~provider/patient relationship and whom I have treated (or with whom I have a ~~doctor~~provider/patient relationship and whose medical history I have reviewed and evaluated).

(Name of patient) has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female).

~~Or~~

~~(Name of patient) is in the process of gender transition to the new gender (specify new gender male or female).~~

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of ~~Physician~~Healthcare Provider

Typed Name of ~~Physician~~Healthcare Provider

Date

United States Department of State

Deputy Assistant Secretary
of Passport Services for Consular Affairs

Washington, D.C. 20520

September 27, 2013

Ms. Harper Jean Tobin
Director of Policy
National Center for Transgender Equality
1325 Massachusetts Avenue, N.W., Suite 700
Washington, D.C. 20005

Dear Ms. Tobin:

Thank you for your September 9 memorandum regarding your organization's recommended revisions to the Department's Foreign Affairs Manual (FAM) appendix pertaining to gender change. Your kind comments on the Bureau of Consular Affairs' efforts to make U.S. passport gender change policy contemporary and easy for the community is very much appreciated.

You have provided us with five well researched recommendations, in addition to some specific changes to our current Foreign Affairs Manual appendix on gender change. My staff, along with my colleagues in the Office of Overseas Citizens Services, would like to have some time to study the information you provided and determine the effect your proposed changes would have on our product and business processes. I can assure you we will devote appropriate resources to examine fully the issues you raised.

I appreciate your valuable ideas and input regarding this subject, and look forward to providing you with a decision regarding your recommendations.

Sincerely,

Brenda S. Sprague

Brenda S. Sprague

United States Department of State

Washington, D.C. 20520

UNCLASIFIED

December 30, 2013

ACTION MEMORANDUM FOR DAS SPRAGUE - CA/PPT

FROM: CA/PPT/S – Barry J. Conway

SUBJECT: National Center for Transgender Equality Recommendations to Amend our Gender Change Policy

Recommendation

That you sign the attached letter to Harper Jean Tobin, Director of Policy for the National Center for Transgender Equality (NCTE), responding to her request to amend our current gender change policy.

Approve Brenda 12-30-13 Disapprove _____

Background

On September 9, Ms. Tobin sent you a request to consider five NCTE recommendations to amend our current gender change policy and procedures. On September 27, you sent an interim response to Ms. Tobin stating that PPT and OCS would carefully consider these recommendations and advise her whether we could make any additional changes to our current policy. Subsequently, PPT and OCS representatives met to discuss the NCTE request and determined that we could recommend the adoption of only one of the NCTE recommendations at this time. PPT drafted a response to Ms. Tobin informing her of our conclusions and recommendations regarding amendment of the current gender change policy.

Attachments:

Tab 1 – Letter to NCTE on Gender Change Policy Amendment

Tab 2 – DAS letter to NCTE, September 27

United States Department of State

Deputy Assistant Secretary
for Passport Services

Washington, D.C. 20520

December 30, 2013

Ms. Harper Jean Tobin
Director of Policy
National Center for Transgender Equality
1325 Massachusetts Avenue, N.W., Suite 700
Washington, D.C. 20005

Dear Ms. Tobin:

Thank you again for your September 9 memorandum regarding the National Center for Transgender Equality's (NCTE) suggested revisions to the Department of State's Foreign Affairs Manual (FAM) appendix pertaining to gender change. NCTE's memorandum proposed that the Department make five additional changes to our procedures for applicants applying for a gender change in their U.S. passports. My staff, along with my colleagues in the Office of Overseas Citizens Services, reviewed your information thoughtfully and considered what changes we could make without affecting the integrity of the passport issuance process. We are implementing one of your proposals; however, we could not accept the others. Let me explain our decisions below.

NCTE asked that we expand the certification requirement to permit certifications from psychologists, nurse practitioners, clinical social workers, and physician assistants. Currently, a large majority of the states do not accept certifications from these types of health care providers. Because of this situation, and in order to treat applicants uniformly to similar standards and requirements, we will continue with our existing practice and require certifications from licensed medical physicians, including medical doctors and doctors of osteopathy.

Similarly, we cannot accept alternative documents such as amended birth certificates or court orders in lieu of a licensed physician certification. There are several reasons for this. First, many amended birth certificates do not indicate what information was changed and an amended change (such as a change in a date of birth, place of birth or parents' information) may affect the bearer's entitlement to a U.S. passport or ability to transmit U.S. citizenship derivatively to a child. Additionally, because of the different laws and regulations in place for each state, if we accepted only an amended birth certificate for gender transition purposes or a court order, we would be forced to accept vital records amended by states using evidence the Department would not accept otherwise. Of course, we will continue to accept an amended birth certificate noting gender change with the required physician certification statement.

NCTE also requested that we eliminate the need for the physician to provide the DEA registration number. When the Department pioneered our new policy regarding gender change in passports, we thought this information would help us verify a physician's status if needed. Time and experience during the last three years has taught us that, while physicians generally have provided us with their DEA registration number on their patients' gender change certification, we have found that we have been able to verify physicians' status by other means. Therefore, I am pleased to tell you that we plan to stop requiring the DEA registration number and will be taking steps to implement this policy change. The requirement will cease once our FAM appendix on gender change has been revised and published.

NCTE also asks that we eliminate the provisional two year passport for applicants in the process of gender transition. The Department determined that we needed the option of a limited passport for someone undergoing the gender transition process who wanted a U.S. passport to travel in the new gender. While doing away with this requirement might simplify our process, as well as that for the applicant, we believe that the identity component of the passport would be compromised if that individual later decided not to complete the transition process. Gender transitioning applicants have been given a major exception to the normal replacement process by allowing two years (as opposed to one), or more if requested, in which to obtain a full validity passport with appropriate medical certification and without having to pay a new fee. The determination on how long the transition process takes is entirely in the hands of the attending physician and the patient. Once the physician certifies the applicant has had appropriate clinical treatment for transition to the new gender, we will issue an applicant a full validity passport.

Your final suggestion was that we allow gender change applicants to use the form DS-82 "Passport by Mail" when they initially are trying to change their gender. This application was created solely for use by applicants who have had a previous U.S. passport, have proven their identity, and whose biographical information either remains the same, or is limited to a name change. Additionally, if changing his or her name, the applicant must be able to document the name change by one legal document, such as a court order, marriage certificate or divorce decree. We require the use of the DS-11for individuals who are changing their names and gender identities, because of the transition to a new gender and the need for specific supporting documentation.

Thank you for your recommendations on enhancing the gender change in a U.S. passport process. You provided us with some notable ideas and information. I look forward to a continued productive relationship with your organization.

Sincerely,

Brenda S. Sprague

Brenda S. Sprague

7 FAM 1300 APPENDIX M
GENDER CHANGE

(CT:CON-551; 12-12-2014)
(Office of Origin: CA/OCS/L)

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7 FAM 1310 APPENDIX M SUMMARY

(CT:CON-541; 11-13-2014)

a. This appendix provides policy and procedures that passport specialists and consular officers must follow in cases in which an applicant requests a gender on the passport application different from the one reflected on some or all of the submitted citizenship and/or identity evidence, including a prior passport.

b. This policy explains the need for medical certification from a licensed physician who has treated the applicant or reviewed and evaluated the medical history of the applicant regarding the change in gender, as well as the need for accurate identification and a photograph reflecting the applicant's current appearance. It is based on standards and recommendations of the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association (AMA).

c. A passport is defined by INA 101(a)(30) (Immigration and Nationality Act) (8 U.S.C. 1101(a)(30)) as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country." An individual's gender is an integral part of that person's identity.

d. Sexual reassignment surgery is not a prerequisite for passport issuance based on gender change.

e. Medical certification of gender transition from a licensed physician as described in 7 FAM 1320 Appendix M is the **only** documentation of gender change required. Other medical records are not to be requested.

f. A Form DS-11 "Application for U.S. Passport" must be used initially as personal appearance for execution is required. A change in gender is a change in the identity of the applicant, and the identification in the new name and gender must be presented.

7 FAM 1320 APPENDIX M DOCUMENTS TO BE SUBMITTED WITH FORM DS-11 PASSPORT APPLICATION

(CT:CON-541; 11-13-2014)

a. Requirements for all elements of the Form DS-11 passport application aside from gender still apply, including:

(1) **Evidence of U.S. citizenship/nationality**. The applicant must submit acceptable evidence of U.S. citizenship or nationality. (See 7 FAM 1100 "Acquisition and Retention of U.S. Citizenship and Nationality.") The applicant is not required to obtain an amended birth record, amended Consular Report of Birth (CRBA), or to request that the U.S. Citizenship and Immigration Services (USCIS) issue a replacement Certificate of Naturalization/Citizenship reflecting the change of gender. State law in the United States and the laws of other countries vary on whether an amended birth certificate may be issued reflecting a gender change;

(2) **Evidence of identity**. As with all applications, the applicant must be asked to submit acceptable evidence of identity (ID) in the new gender and name, if available. (See 7 FAM 1320 "Identity of the Passport Applicant".) However, state law and foreign law vary as to whether a driver's license or other State government form of ID document may be issued reflecting a gender change. So, the applicant may document her/his identity by submitting any of the following ID documents:

(a) Acceptable, for passport purposes, primary ID in the new gender (e.g., state issued driver's license, Certificate of Naturalization/Citizenship);

(b) Secondary ID documents (two or more) in the new gender. The U.S. Department of State Bureau of Consular Affairs Internet page provides information and examples of secondary evidence of identification.

(c) Acceptable primary ID in the old gender.

NOTE: Some form of photographic identification must be presented; You cannot use the doctor's certification as the only evidence to identify an applicant.

(3) **Photograph**. A recent photograph that reflects a good likeness of the applicant, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance (see also 7 FAM 1300 Appendix E "Passport Photographs");

(4) **Passport Fee**. All necessary passport fees must be submitted (see 7 FAM 1300 Appendix G "Passport Fees");

(5) **Name Change.** If the applicant's name has been changed, either by court

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order or through exclusive use for five years, he/she must present satisfactory evidence of the legal name change. Adjudication of the name change must be handled in accordance with requirements contained in 7 FAM 1300 Appendix C "Names to Be Used in Passports".

b. **Medical Certification Accepted for Gender Change/Transition That Must be Submitted with the Passport Application.**

(1) A full validity U.S. passport will be issued reflecting a new gender upon presentation of a signed original certification or statement, **on office letterhead**, from a licensed physician who has treated the applicant for his/her gender-related care or reviewed and evaluated the gender-related medical history of the applicant.

> **NOTE**: Such licensed physicians include Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.). (Not to be confused with Doctors of Optometry (O.D.), whose certifications are **not** acceptable.) The physicians may specialize in various medical fields, including, but not limited to, internists, endocrinologists, gynecologists, urologists, surgeons, psychiatrists, pediatricians, and family practitioners.
>
> Certifications from persons who are not licensed physicians are **not** acceptable. They include, but are not limited to psychologists, physician assistants, nurse practitioners, health practitioners, licensed vocational nurse; registered nurses, chiropractors, or pharmacists, are not acceptable.

The certification or statement **must** include the following information (See 7 FAM 1300 Appendix M Exhibit 1):

(a) Licensed physician's full name;

(b) Medical license or certificate number;

(i) Licensed physicians in foreign countries must have a comparable foreign license or certificate registration number.

(ii) For all foreign licensed physician gender change requests, passport agencies/centers must scan copies of the application and attach all submitted documents to Passport Services' Adjudication Policy Division (CA/PPT/S/A/AP) at "CA-PPT-Adjudication-Suggestion-Box". CA/PPT/S/A/AP works with the Overseas Citizens Services' Office of Legal Affairs (CA/OCS/L) to verify the bona fides of the foreign-based licensed physician with the applicable post abroad. CA/PPT/S/A/AP will advise the passport agency/center of the outcome of post's verification as soon as possible.

(iii) Posts must verify their own foreign-based licensed physicians or, if the statement is from a physician in another country, contact the post which covers that country for verification.

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