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TO: Laurel Havas, OMB Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget (OMB)

THROUGH: Dionne Duncan-Hughes, FNS Information Collection Officer
Planning and Regulatory Affairs
Food and Nutrition Service (FNS)

Ruth Brown, OCIO Desk Officer
Information Management Division
Office of the Chief Information Officer (OCIO)

FROM: Helena Oldenbourg, Program Analyst
WIC Administration, Benefits, and Certification Branch
Supplemental Nutrition and Safety Programs
Food and Nutrition Service (FNS)

SUBJECT: Justification for Non-Substantive Change to OMB Control No: 0584-0332
Federal-State Supplemental Nutrition Programs Agreement (FNS-339)
Update non-discrimination language according to Bostock guidance.
No changes to protocols or burden.

FNS is requesting a non-substantive change to the previously approved collection Federal-State Supplemental Nutrition Programs Agreement (Form FNS-339) (OMB Control No. 0584-0332, exp. 6/30/2025).

The Federal-State Supplemental Nutrition Programs Agreement (FNS-339) is an annual contract between the U.S. Department of Agriculture (USDA) and each State, Territory, and Indian Tribal Government agency seeking to operate one or more of the following programs: the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the WIC Farmers' Market Nutrition Program (FMNP), and the Seniors Farmers' Market Nutrition Program (SFMNP).

According to the Bostock Guidance issued by the Food and Nutrition Service Civil Rights Division May 5, 2022, employment discrimination based on gender identity or sexual orientation constitutes prohibited discrimination based on sex under Title VII of the Civil Rights Act of 1964. This change notice amends the current language of the FNS-339 to best comply with the Bostock Guidance.

There are four instances where it is stated in the current FNS-339 that the State agency will not discriminate on the basis of sex. Once in the Assurances of Civil Rights Compliance Section and three times in the Equal Employment Opportunity Clause.

The following highlighted section have been added to the Assurance of Civil Rights Compliance Section on page 3:

“... on the ground of race, color, national origin, age, sex (including gender identity and sexual orientation), or disability, be excluded from...”

The following highlighted sections have been added to the Equal Employment Opportunity Clause on page 4:

(1) the State Agency will not discriminate against any employee or applicant for employment because of race, color, religion, sex (including gender identity and sexual orientation), pregnancy, genetic information, age, disability, national origin or retaliation. The State Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex (including gender identity and sexual orientation) pregnancy, genetic information, age, disability, national origin or retaliation.

Such actions shall include, but not be limited to.....

(2) The State Agency will, in all solicitations or advertisements for employees placed by or on behalf of the State Agency, state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex (including gender identity and sexual orientation), age, handicap, or national origin.

No changes are proposed to the level of burden. The burden remains the same as the original OMB submission.

If you have any questions regarding this request, please contact Dionne Duncan-Hughes, FNS Information Collection Clearance Officer for the Food and Nutrition Service, Planning & Regulatory Affairs Office at (703) 605-0803.