



ADVOCATING FOR OUR COMMUNITIES

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Policies or Practices for Changing Name and/or Gender Marker on Some Federal Identity Documents

In addition to changing their name and/or gender marker on state identity documents, people might want to also update their federal identity documents. While several federal agencies have explicit regulations about how a person changes their name, no federal agency seems to have a specific regulation on how a person is to change their gender marker

At least four different federal entities receive requests for a change of gender marker on a regular or semi-regular basis: Social Security Administration, Passport Agency, Citizenship and Immigration Service, and the Department of Defense (generally the individual branches of such). Each entity has a practice and/or policy on the subject, but none of them have one that is uniformly followed or clear on its face.

Social Security Administration

Name Change – while it used to be fairly easy to get a name change since a court ordered name change wasn't necessary, the policy has changed.

Official Policy (expanding on 20 CFR § 422.110):

1. Complete an *Application For A Social Security Card* (Form SS-5);
2. Show us proof of your:
 - U.S. citizenship (if you have not previously established your citizenship with us) or immigration status;
 - Legal name change; and
 - Identity.
3. Take your completed application and documents to your local SSA office (you can find a list at <https://s044a90.ssa.gov/apps6z/FOLO/fo001.jsp>). You can also mail them to the SSA.
4. All documents you submit must be either originals or copies certified by the issuing agency. The SSA won't accept photocopies or notarized copies of documents.

Changing Gender Marker – this process can be very difficult. Here is the official policy:

Official Policy: (basis for this policy is unknown):

The surgeon or attending physician must provide a letter verifying the sex change surgery has been **completed**. All documents must clearly identify the NH.

IMPORTANT: Numident sex data is used for identification purposes only. Do not use the sex data shown on the Numident to determine whether a valid marital relationship exists. Rather, consult appropriate State law to make a determination whether a valid marital relationship exists.

However, individual SSA offices are not provided with any guidance on what “the sex change surgery has been completed” means. Nor are they provided with any guidance on how that meaning may or should differ depending on the individual.

Passport Agency

Name Change – not as easy as the Social Security Administration in that common law name changes are recognized, but the new name must have been used over “a long period of time” (in practice, this is often interpreted as 5 years).

Official Policy (22 CFR § 51.24 -- Change of name):

An applicant whose name has been changed by court order or decree shall submit with his or her application a certified copy of the order or decree. An applicant who has changed his or her name by the adoption of a new name without formal court proceedings shall submit with his or her application evidence that he or she has publicly and exclusively used the adopted name over a long period of time.

Changing Gender Marker – no contemporaneous printed policy seems to exist on this topic. However, a memo was circulated sometime prior to 1999 which detailed the procedures for issuing passports to “pre-operative” and “post-operative” transsexuals.

Official Policy (or the closest thing we have): Passport Bulletin 92-22

“Preoperative” Applicant: In case of a preoperative transsexual, submitted documentation should be, at the very least, in the form of a detailed statement from the attending *medical* physician or surgeon outlining the applicant’s past medical history relating to the gender disorder, such as past psychological and hormonal treatment, the treatment stage the applicant currently is in, and the approximate date of the sexual reassignment surgery.

“Postoperative” Applicant: In case of a postoperative transsexual, submitted documentation should be in the form of appropriate medical documentation form either the attending surgeon or hospital evidencing that the sexual reassignment surgery has taken place.

The outcome of presenting these different forms of evidence is a passport with the correct gender marker. In practice, the “postoperative” applicant process outlined above seems to be followed

and a permanent change is made to the person's gender marker once they submit the required paperwork.

However, in practice, many "preoperative" applicants do not need the extensive documentation outlined in the Bulletin (although at the time this document was updated, conflicting anecdotal evidences exists about whether a surgery date needs be imminent). And what is not mentioned above is that the passport for a "preoperative" applicant is only good for a year. And people who haven't had surgery can only get a one-year passport once in their lifetime. Therefore, they should be careful to only ask for one if they are going to get surgery in the next year or are sure that the next year is the one in which they want a passport with the correct gender marker (as impossible as that is to determine).

Citizenship and Immigration Service

Name Change: because the CIS issues so many kinds of documentation (visa, green card, work authorization, naturalization certificate, etc), it's impossible to generalize about their policies with great accuracy. To make matters even more complicated, the CIS is operating without clear guidance on this issue.

With that in mind, as a general rule, people are required to have court orders to have identification documents or records changed to reflect their name change. In fact, permanent residents are required to notify the CIS when they have legal name changes so that the service can issue new green cards. However, it may be possible to have documents issued in the name someone has assumed if that name is used at the time the original application is submitted. This is most easily done in an asylum application. However, individual asylum officers may require a court order, so it is best to get one in advance of an asylum interview (even if the asylum applicant does not have the order at the time of submission of the application).

Change of Gender Marker: no clear policy exists for changing a gender marker through the CIS. A memorandum from 2004, though, attempts to lay out a policy. It could be understood to require anyone wanting to change the gender marker on an existing document or record to produce proof that (a) their birth certificate from their home country has been changed AND (b) that they've undergone some surgery as part of their transition.

The same memorandum, though, seems to allow people who express their identity at the time they first file with the service (for instance, the asylum applicant noted above) to have the corresponding gender listed on all records and documents.

At the time of updating this document, neither of these provisions is enforced consistently.

Department of Defense

Name Change: again, no consistent policy seems to exist that covers all military personnel. However, one thing does seem to be clear for former military personnel: you can't change your discharge papers (DD-214). While people with court orders have had a lot of success changing those records that are "active" (i.e. Veterans Administration records, Statement of Service,

Military ID), it seems to be impossible to change the DD-214 as it is considered a “historic” record that was “accurate” at the time of discharge.

Change of Gender Marker: seems to be a repeat of the above, with the various departments requiring a letter from a surgeon. Luckily, the DD-214 does not list gender.

Selective Service System

In practice, the only people that need to be concerned about the Selective Service System are people who have transitioned from female-to-male who are requesting government benefits which require proof that the applicant has registered with selective service. We most commonly see this with people who are applying for federal educational loans. Surprisingly, the SSS has a policy in place to provide anyone who was not born male with a “Status Information Letter.” The application for the letter can be found at: www.sss.gov/instructions.html

With this form, an applicant for an educational loan can request a document that recognizes that they did not need to register for selective service despite their male gender.