National Center for Youth Law

Re: FR Doc #2026-01676; Information Collection 3090-0290, System for Award Management ("SAM") Registration Requirements for Financial Assistance Recipients

To Whom It May Concern:

We take this opportunity to comment on the General Service Administration's proposed revisions to the SAM certification (Information Collection 3090-0290). We submit this comment to highlight our serious objections to the proposed amendments. As set forth in greater detail below, the proposed changes constitute illegal actions. Importantly, this rulemaking is not occurring in a vacuum: a U.S. federal court struck down a nearly identical attempt by the U.S. Department of Education to require states to recertify their pledge to abide by federal anti-discrimination law. This rulemaking constitutes nothing more than an end-run around that ruling. GSA's proposed provisions suffer additional fatal flaws. Neither the Paperwork Reduction Act nor any other Congressional action authorizes GSA to make these changes. Moreover, there are numerous issues with the text of the proposed provisions: the Anti-DEI provision exceeds the scope of the Constitution and Title VI; the proposed provisions are too vague; the Anti-DEI provision violates the First Amendment; and the proposed provisions are coercive.

I. Overview of Relevant Proposed Provisions

GSA has proposed, in part, the following revisions to the SAM certification process:

- **Anti-DEI provision (Certification #6):** This language would expand on existing requirement that recipients comply with the Constitution and Title VI's prohibitions on race and color discrimination by stating that "Federal antidiscrimination laws apply to programs or initiatives that involve discriminatory practices, including those labeled as Diversity Equity and Inclusion (DEI) or 'diversity, equity, inclusion, and accessibility' (DEIA) programs" and listing examples that purport to describe "practices that may violate applicable Federal anti-discrimination laws."

- **Anti-Immigration Provision (Certification #7):** Citing 8 U.S.C. § 1324, this language would add new requirement that recipients "not knowingly bring or attempt to bring to the United States, transport, conceal, harbor, shield, hire, or recruit for a fee an illegal alien; and . . . not induce an alien to enter or reside in the United States with reckless disregard of the fact that the alien is illegal."

- **Public Safety Provision (Certification #8):** This language would newly require recipients to certify that they will "not fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security."

- **First Amendment Provision (Certification #5):** This language would amend an existing certification requiring compliance with "Executive guidance" to "Executive branch guidance" related to "promoting the freedom of speech and religious liberty in the administration of federally funded programs."

- **FCA Provision (Unnumbered term immediately following the numbered certification):** This language would continue to require recipients to sign an accuracy attestation and comply with the False Claims Act ("FCA") but would newly require recipients to specifically acknowledge potential criminal and civil liability under the FCA for any "false, fictitious, or fraudulent information."

II. This GSA Rulemaking Is Inconsistent with a Recent Court Order

In *American Federation of Teachers (AFT) v. U.S. Department of Education*, a Maryland federal district court struck down recent efforts to curb DEI initiatives in education, vacating both a February 14, 2025, Dear Colleague Letter ("DCL") from the U.S. Department of Education and a related April 3, 2025, Certification Requirement (the "Certification Requirement").[1] There, the Court held that both the DCL and the Certification Requirement violated the Administrative Procedure Act (APA) and raised serious constitutional and procedural concerns.

Specifically, the case entailed a challenge to a guidance letter issued by the Department of Education's Office for Civil Rights and related explanatory materials, along with a new anti-discrimination certification requirement that was to be signed by every school district in every state. In its ruling, the court found that the administration's actions violated both statutory and constitutional limits on federal authority. Among other things, the Court held that the Dear Colleague Letter violated the Administrative Procedure Act ("APA"), the First Amendment, and was unconstitutionally vague. As the Court explained: "Plaintiffs have shown that neither challenged agency action was promulgated in accordance with the procedural requirements of the APA, and that both actions run afoul of important constitutional rights."[2] The court vacated the letter and certification nationwide, barring their enforcement against any educational institution. The Court's decision makes clear that the government cannot use funding threats to make its misinterpretations of federal law binding, nor can it regulate classroom or campus

[1] 796 F.Supp.3d 66 (2025).
[2] *Id.* at 82.

speech through executive orders or other administrative actions that inappropriately threaten heavy financial and criminal consequences.

The Trump administration has formally abandoned its appeal of the federal court's ruling.[3] That should have brought a decisive end to the legal fight over the Trump Administration's attempt to curb all efforts that promote diversity, equity, and inclusion, including those involving third party contracts which was explicitly included in the now vacated certification requirement from the Department of education. The Court sent a clear message that the administration's efforts should be foreclosed, not broadened or implemented with minimal procedural review.

However, these proposed amendments to the SAM certification process strongly suggest that the Trump administration is merely seeking to evade the rule of law, by introducing the same problematic requirements under the guise of this seemingly administrative change. These revisions are nearly identical to what the Court struck down; in fact the proposed SAM revisions would harm many of the same entities that are currently shielded by the Court's decision. If anything, the proposed revisions will have any even greater impact since it would affect nearly every entity that seeks to be a recipient of federal funds.

The Trump administration's efforts to undermine a federal court's order undermines the rule of law and should be rejected.

III. The Proposed Amendments are Contrary to the Paperwork Reduction Act

GSA specifically requested comments on whether this collection of information is necessary. It is not. GSA's current information collection already requires recipients to certify compliance with the Constitution and specific federal laws, including Title VI of the Civil Rights Act of 1964 ("Title VI") and the False Claims Act, as well as regulations, executive orders, and public policies governing federal financial assistance. Accordingly, the burden associated with implementing this new version would be unnecessary and contrary to the Paperwork Reduction Act (PRA).

To the extent that parts of the proposal extend beyond existing law they would expand the current certification requirement in unlawful substantive ways.[4]

- The Anti-Immigration and Public Safety provisions would impose new substantive requirements on recipients.

[3] Order Granting Def.'s Mot. to Voluntarily Dismiss Appeal, *American Federation of Teachers v. U.S. Dep't of Education,* No. 25-2228 (4th. Cir. Jan. 22, 2026).

[4] We note that this expansion—adding substantive conditions on almost all federal financial assistance awarded by agencies across the federal government—may also raise concerns under the Major Questions Doctrine. *See W. Va. v. EPA*, 597 U.S. 697, 724 (2022).

- Although portions of the Anti-DEI provision merely repeat Title VI's protections, other language imposes substantive requirements that exceed the scope of existing law. In particular, GSA states that it seeks to "align" the certification with "updated executive branch guidance," including Executive Order 14173 and the U.S. Department of Justice's Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination ("DOJ Guidance").[5]

- The change to the First Amendment provision suggests a similar expansion requiring compliance with agency-level guidance documents.

By contrast, the PRA merely provides a process by which the federal government may collect information consistent with recipients' *existing* legal obligations. It does not authorize the federal government to create significant new substantive obligations on recipients, make major policy changes without Congressional authority, or interpret laws in ways that are inconsistent with Congress or the courts. "[T]he PRA does not authorize what information an agency may collect, but rather governs the process authorizing how any agency collects information that suits its objectives. It prescribes a framework to ensure oversight, not to expand substantive power."[6] GSA, therefore, cannot use the PRA to prohibit lawful conduct by recipients without express Congressional authorization. The Trump Administration's attempt to do so is yet another illegal effort to usurp Congressional power.

As further explained below, the proposed changes do not meet this standard.

IV. Congress has not Authorized GSA to Place the Proposed Conditions on Federal Funds

GSA lacks the authority to add the proposed provisions to the SAM certification because, like all government agencies, GSA may not add conditions to federal funding that conflict with statutory requirements authorized by Congress.[7] Here, GSA seeks to condition funding on

[5] GSA's notice explicitly references these documents in the "Need & Method for the Information Collection" section, but the proposed Anti-DEI provision does not name them. Instead, it appears to borrow its list of examples directly from the DOJ Guidance, which itself is explicitly non-binding and suffers from legal deficiencies. *See e.g., Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1249 (2025) (*appeal docketed* No. 25-3664, 9th Cir., June 10, 2025) (explaining that the DOJ Guidance "is inconsistent with Supreme Court precedent" and leaves recipients "at the mercy of [the Administration's] interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts").

[6] *Steele v. United States*, 144 F.4th 316, 323 (D.C. Cir. 2025).

[7] *See La. Pub. Serv. Comm'n. v. FCC*, 476 U.S. 355, 374 (1986) (explaining that "an agency literally has no power to act . . . unless and until Congress confers power upon it"); *see also City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020) (quoting same); *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1235

compliance with several new requirements without Congressional authorization, which would violate Constitutional separation of powers. Only Congress has the authority to pass laws and to appropriate funds. The President, and the executive branch by extension, must faithfully execute the laws—including appropriations—as written and not add conditions that they might wish had been enacted by Congress but have not.[8] Otherwise, the Executive Branch is substituting its own policy and funding preferences for those enacted by Congress.

GSA cites statutes or regulations as authority for most of the proposed provisions. But those authorities cited do not support GSA's proposals. To illustrate, GSA cites 2 C.F.R. § 200.303 as a blanket justification for all the proposed provisions. This reliance is misplaced. Section 200.303[9] imposes post-award expectations on recipients to maintain *internal controls* to ensure compliance with, among other things, federal law.[10] In other words, it is a regulation requiring recipients to monitor their own, and their sub-awardees' actions under established federal law. It does not authorize, and could not lawfully authorize, the Executive branch to impose new obligations not established by Congress, such as those in the proposed certification provisions.

GSA's proposal fares no better under other cited "authorities":

- GSA cites to 2 C.F.R. § 200.300 as authority for the First Amendment provision. That regulation directs federal agencies to require recipients to expend federal funds and implement associated programs "in full accordance with the U.S. Constitution," including free speech and religious liberty protections. But while an agency must communicate all relevant requirements to a recipient, "an agency *regulation* cannot create *statutory* authority; only Congress can do that."[11]

(9th Cir. 2018) ("Absent congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.").

[8] *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 633 (1952) (explaining that the President's "power to execute the laws starts and ends with the laws Congress has enacted").

[9] 2 C.F.R. §§ 200.303 and 200.300 are part of OMB guidance for federal agencies. They are not themselves binding regulations. *See* 2 C.F.R. § 1.105 ("The OMB guidance described in § 1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance, not regulation."). We recognize, however, that some federal agencies have incorporated these requirements into their own regulations and so treat them as regulations for purposes of our comments.

[10] *See* 2 C.F.R. § 200.303 (requiring that a recipient and subrecipient each comply with the U.S. Constitution, federal law and regulation, and relevant terms and conditions of the particular award and that they "[e]stablish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award").

[11] *Turner*, 798 F. Supp. 3d at 1248 (emphases in original) (rejecting the government's argument that another regulation from the OMB guidance series, 2 C.F.R. § 200.211, authorized an agency's conditioning of grant funds).

- The Anti-Immigration provision cites a federal statute, 8 U.S.C. § 1324, that provides for criminal liability for bringing undocumented individuals into the United States, harboring them, or inducing them to stay, among other violations. To address violations, the statute provides for imprisonment, criminal fines, and seizure of vessels used to transport undocumented individuals to address violations.[12] Nowhere does it authorize federal agencies to withhold federal funds from recipients for such violations.

- GSA cites no specific statutory authority for the Public Safety provision.

- GSA cites Title VII of the Civil Rights Act of 1964 as an authority for the Anti-DEI provision. Title VII provides for a specific process for aggrieved individuals to follow when employers engage in prohibited employment practices.[13] It does not authorize the conditioning of the employer's federal funds on compliance. In fact, the addition of Title VII to the certification would be altogether new; it is not currently included in the basic list of statutes with which recipients must certify compliance.

- GSA also cites Title VI as an authority for the Anti-DEI provision, but for the reasons explained below, that statute does not authorize GSA's proposal.

V. The Anti-DEI Provision Exceeds Scope of Constitution and Title VI

GSA cites the Equal Protection Clause and Title VI as authorities for the Anti-DEI provision. But GSA cannot rely on the Constitution to create conditions that exceed Constitutional requirements. And although agencies may condition the receipt of federal funds on compliance with Title VI because the language of the statute itself conditions federal financial assistance on nondiscrimination, their Congressionally delegated authority extends only as far as the statute's reach.

The Anti-DEI provision exceeds the nondiscrimination requirements of the Equal Protection Clause and Title VI. Notably, it portrays legally permissible conduct as unlawful discrimination.[14] The Anti-DEI provision explicitly states that federal nondiscrimination laws apply to "programs or initiatives that involve discriminatory practices, including those labeled as" DEI or DEIA programs. Recipients could reasonably read the placement of "including" in this statement to suggest that all programs labeled as DEI and DEIA are within the category of

[12] 8 U.S.C. § 1324(a)(1)(B), (a)(2)-(4), (b)(1).

[13] 42 U.S.C. §2000e-5.

[14] We note that the proposed certification also is contrary to Title VI's *procedural* protections. Title VI and its implementing regulations provide a specific system for addressing potential noncompliance. GSA's attempt here to elevate compliance through the FCA would undermine that Congressionally-mandated process.

"programs or initiatives that involve discriminatory practices."[15] That is simply untrue. Indeed, many efforts to advance diversity, equity, inclusion, and accessibility—including some listed by GSA as examples of possible discrimination in the Anti-DEI provision—are lawful and in some instances even required under the law.

For instance, GSA casts legal doubt on the use of "'cultural competence' requirements, 'overcoming obstacles' narratives, [and] 'diversity statements'" even though the U.S. Supreme Court has explicitly characterized diversity-related mission interests as "commendable" and "plainly worthy" and authorized the appropriate use of these means to achieve those interests.[16] By listing these practices as potentially violating nondiscrimination laws, GSA is misleading recipients. Combined with the threat of False Claims Act and other liability, these examples also would have a major chilling effect on recipients' lawful conduct.

Similarly, the proposed provision uses unclear terms without properly defining them. For example, it is not clear whether a "race-based training" includes a training that focuses on race-related topics. The examples characterize "race-based training sessions" as "segregation based on race or color," and "race-based . . .programs" and "race-based access to facilities" as potentially violating federal civil rights laws. But a training session, study space, event, or student group with a race-related theme or focus is lawful so long as it is open to everyone and does not create a racially hostile environment.[17] The inclusion of such mischaracterizations in the proposed certification—without any acknowledgement of the many ways such programs can be implemented lawfully— demonstrates the overreach. "[T]he administration is entitled to its own views . . . . But it is not entitled to misrepresent the law's boundaries . . . . It cannot blur the lines between its viewpoint and existing law."[18] Here, GSA would require recipients to adhere to *its* interpretation of Title VI, which is divorced from established law, and would make failing to do so a breach of contract punishable by loss of funds, civil liability under the FCA, and even criminal liability under a felony false statements law.

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[15] That another interpretation—that some subset of DEI or DEIA programs may involve illegal discrimination—is possible does not save the Anti-DEI provision. Indeed, that suggests that the provision is too vague to be valid, as explained below.

[16] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) ("[N]othing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."); *see also Turner*, 798 F. Supp. 3d at 1249; *Am. Ass'n of Univ. Professors v. Trump*, No. 25-cv-07864-RFL, 2025 U.S. Dist. LEXIS 224922, at *87 (N.D. Cal. Nov. 14, 2025) (*appeal docketed* No. 26-263, 9th Cir., January 13, 2026).

[17] *See e.g., Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024).

[18] *AFT v. Dep't of Educ.*, 796 F. Supp. 3d 66, 107 (D. Md. 2025); *see also Turner*, 798 F. Supp. 3d at 1249 (finding that the U.S. Department of Justice's July 29, 2025 DEI-related guidance misstated the requirements of federal law and observed that under its terms, recipients would be "at the mercy of" the Administration's interpretation of federal civil rights laws even if it differs from courts' interpretation).

VI. The Proposed Provisions are too Vague to be Conditions on Federal Financial Assistance

One of the constraints on federal action imposed by the Constitution's Spending Clause is the requirement that governmental rules provide clear notice to recipients about the conduct expected of them.[19] GSA's proposed provisions fail to meet this standard.

The Anti-DEI provision, for example, never defines the term "DEI" or "DEIA" or endeavors to meaningfully distinguish between lawful and unlawful conduct. It is thus impossible for recipients to know what type of conduct to avoid. "Reliance on an undefined term of DEI" would allow GSA "to arrive at whatever conclusion it wishes without adequately explaining the standard on which its decision is based."[20]

Even GSA's description of how federal law applies to DEI programs is ambiguous. The proposed certification states that "Federal antidiscrimination laws apply to programs or initiatives that involve discriminatory practices, including those labeled as" DEI or DEIA programs. Does this statement ban recipients from engaging in *all* DEI and DEIA programs or only those that "involve discriminatory practices?" What about DEI and DEIA programs that have been ordered by federal courts and/or are necessary to comply with federal law?

GSA's notice explaining what it considers DEIA-related does not resolve the ambiguity. It states that the change is designed to "align with updated executive branch guidance including" the DOJ Guidance and Executive Order 14173, which broadly impugns all DEI as the opposite of merit, hard work, and excellence. Both of those documents likewise seek to ban DEI and DEIA programs, sweeping in a wide range of permissible conduct. A recipient would be hard-pressed to understand what obligations would flow from signing the proposed certification and would likely be chilled from engaging in permissible conduct.

The Anti-Immigration provision is vague because of the necessary limiting scope it omits. The proposed provision would prohibit conduct that would "induce" a noncitizen "to enter or reside in the United States" with "reckless disregard" of the individual's immigration status. This language borrows from the statute it quotes, which uses the term "encourages or induces," without reference to the Supreme Court's limiting interpretation of that language. To a recipient, these provisions may appear extremely broad and without clear contours and therefore

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[19] *See South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (quoting *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)) (explaining that "if Congress desires to condition the . . . receipt of federal funds, it 'must do so unambiguously'" so that recipients can "exercise their choice knowingly, cognizant of the consequences of their participation")).

[20] *Am. Pub. Health Ass'n v. NIH*, 791 F. Supp. 3d 119, 180 (D. Mass. 2025) (citations omitted) (*appeal docketed,* No. 25-1611, 1st Cir., June 24, 2025).

would chill a great deal of Constitutionally protected speech, conduct, and association. But the Supreme Court has interpreted the underlying statute, holding that, despite its seemingly broad language, the law "uses 'encourages or induces' in its specialized, criminal-law sense—that is, as incorporating common-law liability for solicitation and facilitation."[21] This holding significantly narrows the conduct that the statute reaches. Assuming GSA means for the Anti-Immigration provision to reach the same conduct, it should explain that to recipients and cite to *United States v. Hansen*. If GSA instead means "induce" in its broader, everyday sense, then it is overbroad and fails to explain with specificity what conduct is prohibited.

Furthermore, as a general matter, any condition that requires compliance with unspecified "relevant executive orders" or "executive branch guidance"—as the First Amendment and Anti-DEI provisions would—is too vague, in violation of longstanding due process guarantees. Aside from the fact that executive orders are not binding on recipients unless they are codified in law, they can change daily. A sitting President can issue infinite executive orders seeking to "mandate" all manner of conduct. And because executive orders cross Administrations, they can theoretically impose conflicting requirements. The same is true of sub-regulatory guidance. Guidance typically does not go through the same process as formal regulations (and so does not carry the same force of law), can be rescinded or replaced with little notice, and may take contrary positions over time. (Indeed, the DOJ Guidance explicitly noted that it is "non-binding.") If a recipient were to sign the proposed certification, the recipient would have no way of knowing with any specificity what conduct the Anti-DEI and First Amendment provisions would allow or prohibit over the course of the funding period.

GSA's elevation of existing FCA requirements heightens the stakes associated with the unlawful vagueness of these proposed provisions.[22] GSA's current certification requires recipients to certify compliance with the False Claims Act. This proposal would require recipients to sign an accuracy attestation and acknowledge the potential for severe criminal and civil liabilities if the recipient provides "false, fictitious, or fraudulent information."[23] This elevation of the FCA in the certification suggests that GSA intends to invoke the statute—and its corresponding severe remedies—if recipients fail to meet the conditions in the certification.[24]

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[21] *United States v. Hansen*, 599 U.S. 762, 774 (2023).

[22] *See Cnty. of Santa Clara v. Noem*, No. 25-cv-08330-WHO, 2025 U.S. Dist. LEXIS 230553, at *122 (N.D. Cal. Nov. 21, 2025) (appeal docketed No. 26-402, 9th Cir., January 20, 2026) ("The lack of clear definitions, coupled with the well-founded fear that the [government] may use the FCA as a 'weapon' against grant recipients, lends credence to [the] arguments that the Discrimination Condition [prohibiting DEI] is ambiguous.").

[23] We note that the statutory standard for liability is one requiring false statements made with "actual knowledge," "deliberate ignorance," or "reckless disregard"—in other words, the FCA does not cover every error. *See* 31 U.S.C. § 3729(b).

[24] In fact, GSA attempts to reserve the right to invoke the FCA against recipients who have not obtained an applicable injunction for failing to comply with specific provisions even in situations where courts have found those provisions to be invalid generally. The proposed certification states: "To the extent that

But given the vagueness of the certification itself, it seems impossible for recipients to certify with confidence that they can meet the required standards. In fact, recipients might have to certify that they will comply with standards that have not yet been issued and risk potential imprisonment if they are wrong. GSA's apparent intent to pursue penalties under the FCA for violations of the proposed provisions makes the scope of obligations that would flow from the certification impossible to determine.

VII. The Anti-DEI Provision Would Implicate Recipients' Free Speech Rights

GSA's proposed Anti-DEI provision would also implicate recipients' First Amendment free speech rights. The Constitution's Spending Clause limits the federal government's ability to impose funding conditions that infringe on recipients' constitutional rights.[25] As a federal agency, GSA does not have the right to impose restrictions on protected speech and conduct as a condition of all federal financial assistance, unconnected to the purpose of the funding.[26] GSA's attempt at regulating speech outside the statutory contours of a federal funding program is evident, as no specific program is implicated. These certifications attach to recipients of funds across multiple, unspecified programs.

Registration in the SAM system is a prerequisite for applying for and maintaining most federal funding, and the certification would be a required part of that registration. As such, it would apply to almost all recipients of federal financial assistance and is not grant-specific. It does not consider the purpose of the funds or the scope of the funding program, but rather it seeks to bind all recipients to the same broad certification whether those conditions are related to a specific funding program or not. To the extent that the proposed provisions infringe on protected speech and conduct, such a requirement is unlawful.[27]

Here, the text of the proposed Anti-DEI provision in its overbreadth does infringe on legally protected speech and conduct. It seeks to prohibit the consideration of race in a wide variety of situations—some of which are clearly permissible.

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any the certifications or representations on this page are the subject of an active court order or injunction that is legally binding on the recipient and the relevant awarding agency, and prohibits enforcement of such requirements, the affected certifications or representations will be deemed inapplicable to that recipient. All other certifications and representations not directly affected by such order shall remain in full force and effect."

[25] *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,* 570 U.S. 205, 214 (2013)*; Legal Servs. Corp. v. Velazquez,* 531 U.S. 533, 542 (2001).

[26] *Agency for Int'l Dev.*, 570 U.S. at 214-15 (2013) (explaining that "the relevant distinction that has emerged from our cases is between conditions that define the limits of the government spending program—those that specify the activities Congress wants to subsidize—and conditions that seek to leverage funding to regulate speech outside the contours of the program itself").

[27] *See Velazquez*, 531 U.S. at 547 ("Congress cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise.").

In addition, other agencies' responses to President Trump's anti-DEI executive orders[28] continue to reflect actions that violate First Amendment protections. Multiple sources have confirmed efforts by other government agencies to remove a broad list of words and terms from public-facing websites and to review grant proposals and contracts for the forbidden words and terms.[29] The list included only terms protected by the First Amendment—there is no indication that agencies were searching for obscenity, defamation, true threats, or the like. In fact, the list included words representing the opposite, like "inclusive," "anti-racism," "multicultural," and "injustice." Given the Administration's pattern of conducting this type of speech-related review, it is reasonable to expect GSA's proposed provisions—which target the same topics—to inappropriately chill recipients' speech.

Furthermore, the Anti-DEI provision suggests that GSA seeks to engage in prohibited viewpoint discrimination, by warning recipients against taking action against individuals who "engage in protected activities related to opposing DEI practices," without any mention of retaliation against those who *promote* DEI practices. Such selectivity is not permissible.[30]

VIII. The Proposed Certification is Coercive and Constitutes Unlawful Overreach.

If approved, this substantial change will seriously harm all of those who must abide by the SAM.gov certification requirements[31] in order to apply for and receive federal funds which apply to applicants for Federal financial assistance (collectively "recipients"), including those in the education and research sectors.

GSA seeks to amend its SAM.gov certification requirements in several consequential ways, including by adding three new provisions, amending an existing provision to expand the scope of the certification, and highlighting the potential for severe enforcement consequences under a fraud statute in a manner that is at odds with that statute's limitations. As a threshold

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[28] Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 29, 2025), "Ending Radical and Wasteful Government DEI Programs and Preferencing"; Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 31, 2025), "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."

[29] Karen Yourish, Annie Daniel, Saurabh Data, Isaac White, and Lazaro Gamio, *These Words are Disappearing in the New Trump Administration*, N.Y. TIMES (March 7, 2025), https://www.nytimes.com/interactive/2025/03/07/us/trump-federal-agencies-websites-words-dei.html; *see also Wash. State Ass'n of Head Start v. Kennedy,* No. C25-781-RSM, 2026 U.S. Dist. LEXIS 1799, at *31-32 (W.D. Wash. Jan. 6, 2026); *Neeta Thakur v. Trump,* 787 F. Supp. 3d 955, 967 (N.D. Cal. 2025) ("Agency Defendants have admitted that grants were flagged for termination for researching blacklisted topics, based on keyword searches or titles.").

[30] *See AFT*, 796 F. Supp. 3d at 112 ("[T]he government does not dispute [that] 'a person who...opposes DEI . . . is perfectly free to use federal funds to exercise their expression and do so without the fear that they will be punished or have funds taken away as a result.' That is clear viewpoint discrimination." (citation omitted)).

[31] GSA states that "The following link provides information on the current data being collected for Federal financial assistance recipients: Entity Registration Checklist - https://www.fsd.gov/sys_attachment.do?sys_id=82f480491b4dfd142fe5ed7ae54bcb0c."

matter, GSA lacks the authority to make these proposed changes, both because they are contrary to the Paperwork Reduction Moreover, the text of the proposed changes is both vague and overbroad, is inconsistent with the Constitution and federal law, and, as such, would create confusion about the obligations GSA seeks to impose on roughly 222,000 SAM-registered recipients.

GSA's proposal would have significant implications for all recipients of federal financial assistance. It would require recipients to choose between signing an unclear and legally questionable certification and losing millions, or even billions, of dollars in funding that supports important work.

The GSA should also withdraw its proposed certification because it would be unlawfully coercive. Because the federal government's funding of recipients is "much in the nature of a contract[,] Congress' power to legislate under the spending power . . . rests on whether the [recipient] voluntarily and knowingly accept the terms of the 'contract.'"[32] Thus, the Constitution's Spending Clause prohibits the government from attaching conditions to federal funding that "might be so coercive as to pass the point at which 'pressure turns into compulsion.'"[33]

For many recipients, GSA's proposed SAM certifications can be expected to result in an unlawful coercive barrier to entry for almost all federal financial assistance. Recipients cannot access most financial assistance from any government agency without first registering for the SAM system, and the proposed certification would be required for that process. For some recipients, billions of dollars may be at stake when they decide whether to sign the proposed certification, including the flawed proposed provisions discussed above.

But the broad applicability of the SAM registration and certification suggests that situations amounting to coercion will be common. There is no hard and fast percentage of funding at which pressure becomes compulsion.[34] But for many recipients registering in the SAM system, the choice to forgo federal funding would be no real choice at all. That is the clearest evidence of coercion.

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[32] *Pennhurst*, 451 U.S. at 17.

[33] *Dole*, 483 U.S. at 211 (1987) (quoting *Steward Mach. Co. v. Davis*, 301 U.S., 548, 590 (1937)).

[34] *Compare Dole*, 483 U.S. at 211 (holding that the loss of a 5% of highway funds obtainable through other grant programs was not enough to constitute "coercion") *with Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581 (2012) (stating that a threat to all of a state's Medicaid funding was "much more than 'relatively mild encouragement'—it is a gun to the head").

For the reasons above, we urge GSA withdraw its proposal. The current certification already requires recipients to certify compliance with the Constitution and relevant federal statutes, including Title VI. This is sufficient to allow federal agencies to ensure compliance with applicable laws. The current certification also allows recipients to certify compliance with long-standing judicial interpretations of the law, which they have independent obligations to follow. This proposed rule, by contrast, is attempting to effectively usurp the authority of both the judiciary and legislative branches.

As a practical matter, the new requirements are also unworkable for recipients. It is not clear what conduct is permitted or prohibited, and the certifications would condition almost all federal financial assistance on GSA's unauthorized interpretations of the law.

For all these reasons, we strongly urge GSA to maintain its current certification rather than proceed with this deeply flawed and likely illegal proposed change.

Thank you for your consideration.

Respectfully submitted,

Dan Losen

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