National Council of Nonprofits

Champions for the public good

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Elizabeth F. DelNegro
Associate Chief Information Officer
General Services Administration
Regulatory Secretariat Division (MVCB)
Washington, DC 20405

Subject: Comment on Information Collection 3090-0290, System for Award Management Registration Requirements for Financial Assistance Recipients (OMB Control No. 3090-0290)

Dear Ms. DelNegro,

The National Council of Nonprofits submits the following comments urging the General Services Administration to withdraw its proposal to revise the Financial Assistance General Certifications and Representations required for System for Award Management registration.[1]

The National Council of Nonprofits (NCN) is the nation's largest network of nonprofits, with more than 37,000 organizational members through our state and regional associations of nonprofits. The proposed certifications would directly affect NCN's members and the communities they serve.

I. Introduction

On January 28, 2026, the General Services Administration (GSA) published a notice in the Federal Register proposing significant revisions to the Financial Assistance General Certifications and Representations required of entities that register in the System for Award Management (SAM).[2] SAM registration is a prerequisite to apply for or receive any federal financial assistance—grants, cooperative agreements, loans, and direct appropriations—from any federal agency. Every nonprofit organization, state and local government, tribe, university, hospital, and other entity that applies for or receives federal funding must register in SAM and recertify annually. This includes nonprofits in NCN's network that partner with the federal government by applying for and receiving federal resources to help meet essential needs in their communities. NCN members use federal funding to show up in times of crisis, providing disaster

[1] The National Council of Nonprofits appreciates the assistance of Democracy Forward Foundation in the preparation of this comment.
[2] *Information Collection; System for Award Management Registration Requirements for Financial Assistance Recipients*, 91 Fed. Reg. 3726 (GSA, Jan. 28, 2026).

relief, crisis support, and safety from danger, and meet every day needs from providing childcare and eldercare, job training, or essential food and shelter.

The proposed revisions would add three new substantive certifications to that registration: an Anti-DEI Certification targeting diversity, equity, and inclusion (DEI) activities, and providing a non-exhaustive list of practices the Administration claims "may violate" antidiscrimination law; an Immigration Certification requiring applicants to certify they will not, among other things, "transport, conceal, harbor, shield" an "illegal alien"; and a Terrorism Certification requiring applicants to certify they will not fund, subsidize, or facilitate "illegal activities that threaten public safety or national security." Each certification is backed by potential civil and criminal liability under the False Claims Act (FCA) and criminal liability under 18 U.S.C. § 1001—consequences that the Administration has made clear it intends to enforce aggressively.

For the reasons set forth below, we urge GSA to withdraw the proposed revisions. The certifications would impose an excessive burden on applicants—precisely what the Paperwork Reduction Act (PRA) was designed to prevent. The certifications are not necessary for the proper performance of agency functions, lack practical utility as an information collection, use vague and undefined terms that violate the plain-language standard, and compound rather than reduce the burden of duplicative certification requirements.

Beyond the PRA's procedural requirements, the certifications are independently unlawful: they violate the First Amendment by restricting protected speech and association far beyond the scope of any funded program, the Fifth Amendment's Due Process Clause by imposing liability without fair notice of what is prohibited, and the Spending Clause and other constitutional provisions safeguarding the separation of powers by imposing conditions on federal funding that Congress has not authorized. Courts have repeatedly struck down similar certification requirements at the agency level, and GSA cannot cure these constitutional defects by disguising the requirements as a routine paperwork update to the SAM registration process.

II. The Proposed Certifications Fail the PRA's Necessity, Utility, and Plain Language Requirements

Congress enacted the PRA to ensure that federal agencies "become more responsible and publicly accountable for reducing the burden" agencies impose on the public when collecting information. *See* Pub. L. No. 104-13, 109 Stat.163 (1995). The PRA requires that every information collection be "necessary for the proper performance of the functions of the agency," have "practical utility," and be written in "plain, coherent, and unambiguous terminology." 44 U.S.C. §§3506(c)(3)(A), (D); §3508.

GSA's proposal to add new certifications to the SAM registration information collection violates every one of these requirements. The proposal cannot pass muster under the PRA because it is flawed at a fundamental level: the certifications do not collect information that agencies need to administer grant programs. They are substantive—and unlawful—grant conditions masquerading as an information collection. Because the proposed changes fail the PRA's necessity, practical utility, and plain language requirements on multiple independent grounds, they must be withdrawn.

A. The Anti-DEI Certification Is Not Necessary and Lacks Practical Utility

The Anti-DEI Certification is a coercive, unconstitutional measure—designed to deter grantees' lawful activities based on the policy preferences of the current Administration—in the guise of a routine information collection. The certification is not necessary for the administration of agency operations, it has no lawful practical utility, and it cannot be reconciled with the requirements of the PRA.

1. The Certification Rests on Unsupported Legal Foundations

The Administration's novel and sweeping pronouncements against DEI are not grounded in established law. Rather, the Administration has advanced these policy preferences through non-binding Executive Orders and agency guidance documents. GSA's January 28 Federal Register notice states that the proposed revisions would "align with updated executive branch guidance including Department of Justice 'Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination' (July 29, 2025) and Executive Order (E.O.) 14173 of January 21, 2025, Ending Illegal Discrimination and Restoring Merit-Based Opportunity."

Executive orders and guidance documents do not make law, and they cannot create binding obligations on the public. *See Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-1189, slip op. (4th Cir. Feb. 6, 2026) (finding that a provision of Executive Order 14151 requiring termination of DEI-related grants "is nothing more than 'an outward-facing policy directive from the President to his agents" that does not "regulate private conduct.'") The July 29 DOJ memo itself acknowledges that it offers only "non-binding suggestions" and "not mandatory requirements."[3] Yet the Anti-DEI Certification would require 222,760 federal funding recipients to comply with executive orders, while also effectively incorporating these contested legal interpretations. As the court noted in *Martin Luther King, Jr. Cnty. v. Turne*r, 2:25-cv-00814 (W.D. Wash., Jun. 3, 2025), the "rote incorporation of executive orders—especially ones involving politically charged policy matters that are the subject of intense disagreement and bear no substantive relation to the agency's underlying action—does not constitute 'reasoned decisionmaking.'"

2. The Certification Conflicts with Established Law

The Anti-DEI Certification would require applicants to agree that federal antidiscrimination laws apply to programs "labeled as Diversity, Equity, and Inclusion (DEI) or diversity, equity, inclusion, and accessibility (DEIA) programs," and lists a non-exhaustive list of specific practices that the Administration claims "may violate applicable Federal anti-discrimination laws." These include, among other things, programs using cultural competence requirements, overcoming obstacles narratives, diversity statements, and race-based scholarships or programs.

Despite its best efforts, however, even the Administration has been forced to concede that diversity, equity, and inclusion are not illegal. *See Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump, et al.,* No. 25-1189 (4th Cir. Feb. 6, 2026) (Diaz, C.J., concurring) (noting that the government "represented at oral argument that there is 'absolutely' DEI activity that falls comfortably within the confines of the law.") Indeed, in many cases Congress has not only

[3] *See* Attorney General's Memorandum, "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (Jul. 29, 2025), available at: https://www.justice.gov/ag/media/1409486/dl.

authorized but required grant recipients to engage in the kind of DEI-related activities that the Administration now seeks to prohibit. For instance, the Violence Against Women Act directs grantees to serve populations facing barriers due to race, ethnicity, gender identity, and alienage status, and prohibits discrimination on those same bases. 34 U.S.C. §§ 12291(a)(46), 12291(b)(13)(A). The Family Violence Prevention and Services Act requires State Domestic Violence Coalitions to specifically address the needs of victims from racial and ethnic minority populations and underserved populations. 42 U.S.C. §10411(d)(3), (8). And the Community Development Block Grant program authorizes, and in some cases requires, grantees to prioritize services for economically disadvantaged and minority communities. 42 U.S.C. §§ 5307(b)(2), (c). The Anti-DEI certification suggests that the Administration may deem complying with these statutory mandates to be unlawful and against the certification.

3. The Certification is Coercive and Unduly Burdensome

The proposed certifications are backed by False Claims Act (FCA) liability. Registrants must attest that submitting false or inaccurate certifications may result in civil liability under the FCA or criminal prosecution under 18 U.S.C. §1001. Though FCA liability is not a new addition to the certification requirements, that exposure takes on heightened significance in light of the Administration's stated enforcement intentions.

On May 19, 2025, Deputy Attorney General Todd Blanche announced a new DOJ "Civil Rights Fraud Initiative" and declared that the FCA would be used as a "weapon" against federal funding recipients.[4] The memorandum specifically targets organizations that engage in DEI activities and "strongly encourages" private citizens to file qui tam suits under the FCA. *Id*. The following month, the DOJ's Civil Division announced that using the FCA to combat DEI programs is the Division's number one enforcement priority.[5] DOJ committed to use "all available resources to pursue affirmative litigation combatting unlawful discriminatory practices in the private sector," including against "entities that receive federal funds but knowingly violate civil rights laws." *Id*.

Against that backdrop, it is clear that the Anti-DEI Certification is not a routine compliance requirement. It is a coercion tactic—designed to manufacture FCA risk that forces grant recipients to abandon lawful diversity, equity, and inclusion programs. The excessive burden the certification imposes on applicants is its very purpose.

But that purpose is incompatible with the burden minimization requirements of the PRA. A certification designed to expose applicants to risk of burdensome civil and criminal litigation for engaging in lawful activities cannot be said to be "necessary for the proper performance of agency functions" or to have "practical utility" as an information collection. Neither the PRA nor any other statute authorizes GSA to require certifications for this purpose.

[4] *See* DOJ Memorandum, "Civil Rights Fraud Initiative" (May 19, 2025), available at: https://www.justice.gov/dag/media/1400826/dl.

[5] See DOJ Memorandum "Civil Division Enforcement Priorities" (Jun. 11, 2025), available at: https://www.justice.gov/civil/media/1404046/dl.

B. The Anti-DEI Certification Is Unconstitutionally Vague and Violates the PRA's Plain Language Requirement

The PRA's requirements that an information collection be written "using plain, coherent, and unambiguous terminology" and be "understandable to those who are to respond," 44 U.S.C. §3506(c)(3)(D), parallel the Fifth Amendment's due process requirement of fair notice. *Grayned v. City of Rockford,* 408 U.S. 104, 108 (1972) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."); *FCC v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (explaining that due process forbids the imposition of penalties based on a statute or regulation that "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement."). The Anti-DEI Certification fails both standards.

The proposed certification does not define "DEI" or "DEIA." It does not specify which executive orders are "relevant." Its list of practices that "may violate" antidiscrimination law is expressly "non-exhaustive." And the standard against which programs must be measured is ambiguous and subject to constant change. As one court put it: what the Administration considers to be illegal DEI is "anything but obvious." *See Chicago Women in Trades,* 1:25-cv-02005 (N.D. Ill. Mar. 27, 2025).

A certification that requires applicants to attest that their programs comply with a legal standard that the government itself cannot define, in a context where the government has announced it will aggressively and expansively enforce that undefined standard using the False Claims Act, violates both the PRA's plain-language requirement and the Constitution's Due Process Clause.

C. The Anti-DEI Certification Violates the First Amendment

The First Amendment prohibits the government from conditioning federal benefits on the surrender of constitutionally protected speech. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013) (AID). While the government may impose conditions on the use of federal funds, it may not restrict "protected speech outside the scope of the federally funded program." *Id*. at 217. Nor may the government condition funding in a manner that discriminates based on viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995) ("The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."); *see also Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175 (2024). The Anti-DEI Certification violates these principles.

Programs and activities that promote diversity, equity, and inclusion inherently involve speech. They include training, education, public communications, advocacy, and organizational culture-building. Effectively barring organizations from operating programs involving diversity statements, cultural competence training, "overcoming obstacles" narratives, or other unspecified DEI-related activities is an impermissible burden on constitutionally protected speech.

1. The Certification Constitutes Unlawful Viewpoint Discrimination

The Anti-DEI certification targets a specific viewpoint—support for diversity, equity, and inclusion—for disfavorable treatment. The Administration has been explicit that it objects to DEI

not because of any specific unlawful conduct, but because of DEI's "foundational rhetoric and ideas."[6] That is textbook viewpoint discrimination.

Courts reviewing analogous DEI certification requirements have found them to constitute impermissible viewpoint discrimination. *See Chicago Women in Trades,* 1:25-cv-02005 (N.D. Ill. Mar. 27, 2025); *Rhode Island Coalition Against Domestic Violence v. Kennedy*, 1:25-cv-00342 (D.R.I. Oct. 10, 2025). The PRA does not permit GSA to launder unconstitutional viewpoint discrimination through an information collection in the SAM registration process.

2. *The Certification Impermissibly Restricts Speech Beyond the Scope of Federally Funded Programs*

The Anti-DEI Certification appears to extend to all of an organization's programs and activities, irrespective of whether those programs are federally funded. Though portions of the certification are cabined to conduct "in the administration of federally funded programs," the certification goes on to require that organizations "ensure that their programs and activities comply with" the Administration's interpretation of applicable law, without any limitation. By broadly, and inaccurately, declaring that federal antidiscrimination law prohibits DEI, the certification attempts to force applicants to abandon diversity, equity, and inclusion activities across all of their operations—a restriction that extends far beyond the scope of any grant program. The Supreme Court has made clear that the government may not condition federal funding on a requirement that the recipient adopt restrictions on its own private speech and conduct unrelated to the funded program. *AID*, 570 U.S. at 217-18.

3. *The Certification Creates a Chilling Effect on Constitutionally Protected Activity*

The predictable and intentional chilling effect of the Anti-DEI Certification is independently unconstitutional regardless of whether enforcement ever occurs. *See Keyishian v. Board of Regents,* 385 U.S. 589, 604 (1967) ("The threat of sanctions may deter the exercise of First Amendment rights almost as potently as the actual application of sanctions.") It also makes the certification incompatible with the PRA's "practical utility" and burden minimization requirements.

The Anti-DEI Certification—combined with the Administration's explicit threat to use the FCA as a "weapon" against organizations engaging in disfavored speech—will predictably drive organizations to self-censor activities and abandon lawful programs to avoid the risk of FCA litigation and liability. Many organizations will not wait to learn through enforcement whether the Administration considers their inclusive hiring policies or their outreach to underserved communities to be unlawful discrimination. That self-censorship is itself a First Amendment injury; the government may not suppress constitutionally protected speech, and it cannot achieve the same result indirectly through threat of FCA liability.

[6] *See* White Fact Sheet, "President Donald J. Trump Protects Civil Rights and Merit-Based Opportunity by Ending Illegal DEI" (Jan. 22, 2025), available at: https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-protects-civil-rights-and-merit-based-opportunity-by-ending-illegal-dei/

D. The Immigration and Terrorism Certifications Are Unconstitutionally Vague and Fail the PRA's Plain Language Requirement

The vagueness problems that afflict the Anti-DEI Certification are, if anything, more acute in the Immigration and Terrorism Certifications. Both certifications carry the same criminal and FCA liability. Neither defines its operative terms. And neither contains a "federally funded programs" limitation; they apply on their face to all of an organization's activities, regardless of the source of funding.

1. The Immigration Certification's Terms Are Undefined and Irreconcilably Ambiguous

The Immigration Certification requires applicants to certify they will not "harbor," "shield," "conceal," or "transport" or "induce" an "illegal alien" to reside in the United States. These terms are largely borrowed from Section 274 of the Immigration and Nationality Act, 8 U.S.C. §1324, but divorced from the critical limiting constructions that courts have developed over decades to distinguish unlawful harboring from lawful humanitarian assistance. Courts have held that providing shelter, medical care, or legal assistance to undocumented individuals without intent to help them evade detection does not constitute illegal harboring. *See United States v. Costello,* 666 F.3d 1040, 1044 (7th Cir. 2012); *DelRio-Mocci v. Connolly Props. Inc*., 672 F.3d 241, 247 (3d Cir. 2012). The Immigration Certification incorporates none of this critical limiting construction, leaving it unclear what the certification is meant to cover.

The certification's vagueness is compounded by its use of the term "illegal alien"—a term that does not appear in the cited statute and is not defined in the Immigration and Nationality Act or any other federal law. The Immigration Certification's use of this term is ominous considering how the current Administration has consistently used "illegal alien" to describe non-citizens who are lawfully present in the United States under established federal law. The Administration's vilification of "illegal aliens" has extended to asylum seekers with pending applications,[7] humanitarian parolees,[8] holders of Temporary Protected Status,[9] and DACA recipients.[10] As a result, the Immigration Certification creates inescapable uncertainty for organizations that provide entirely lawful services to virtually any immigrant population.

The Immigration Certification is precisely the kind of undefined standard—enforced at the discretion of an agency that refuses to define it—that the Due Process Clause forbids and that the PRA's plain-language requirement is designed to prevent.

E. The Immigration and Terrorism Certifications Violate the First Amendment

Both the Immigration Certification and Terrorism Certification reach protected expressive activity far beyond any federally funded program. The Immigration Certification directly

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[7] *Asylum-Seekers Increasingly Face Detention While Their Cases Proceed*, NBC News (Mar. 13, 2026), available at: https://www.nbcnews.com/news/us-news/asylum-seekers-pressured-leave-us-dhs-immigration-ice-detention-rcna259534.

[8] *Trump Orders End of Humanitarian Parole for Migrants of 4 Countries*, NPR (Jan. 20, 2025), available at: https://www.npr.org/2025/01/20/nx-s1-5268986/trump-humanitarian-parole-immigration.

[9] *Trump Now Targets Immigrants with Temporary Legal Status. Is an Outdated U.S. System to Blame?*, WLRN (Feb. 21, 2025), available at: https://www.wlrn.org/americas/2025-02-21/trump-immigration-deportation-tps.

[10] *DHS Is Urging DACA Recipients to Self-Deport*, NPR (July 29, 2025), available at: https://www.npr.org/2025/07/29/nx-s1-5482923/dhs-daca-recipients-self-deport.

restricts organizations' First Amendment protected activity, with no "federally funded programs" limitation. Organizations that publish know-your-rights guides, provide legal information to immigrant communities, advocate for sanctuary policies, or engage in public campaigns opposing immigration enforcement practices engage in speech that the First Amendment fully protects. A certification that requires these organizations to certify they will not "shield" "illegal aliens" or "induce" them to reside in the United States—with no definition of those terms and the threat of FCA liability attached—will predictably cause organizations to curtail entirely lawful advocacy and legal assistance. The government cannot condition access to federal funding on a commitment to self-censorship of constitutionally protected advocacy.

The Terrorism Certification suffers from the same defect. The government may not use the label "terrorism" to strip otherwise protected speech and association of constitutional protection, and may not condition funding on the suppression of disfavored political viewpoints, *Vullo*, 602 U.S. at 187. The proposed certification—which prohibits "facilitating" undefined "activities that threaten public safety or national security"—must be understood in the context of the Administration's pattern of using "domestic terrorism" as a label for political opposition. The Administration has made clear that it will deploy the Terrorism Certification as a viewpoint-discriminatory tool, to facilitate the targeting of organizations whose advocacy it opposes.

The chilling effects produced by both the Immigration and Terrorism Certifications are not only predictable—they are intentional. The combination of undefined terms, FCA liability, and an Administration that has explicitly committed to weaponized enforcement is a calculated effort to coerce organizations to preemptively abandon lawful programs. GSA has no lawful authority to impose certification requirements that violate applicants' constitutional rights. Laundering these conditions through the PRA process does not cure their constitutional deficiencies. To the contrary, certification requirements that violate the First Amendment cannot be "necessary" or have "practical utility" within the meaning of the PRA.

F. All Three Certifications Violate the Spending Clause and Separation of Powers

All three proposed certifications fail the Spending Clause test because Congress has not authorized any of them. Congress alone has the power of the purse, and the executive branch may only exercise spending authority that Congress has delegated. *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1233–34 (9th Cir. 2018). The Spending Clause vests in Congress—not the executive—the authority to attach conditions to federal grants. *South Dakota v. Dole,* 483 U.S. 203, 206 (1987). Even when exercising this power, Congress must satisfy the requirements that any conditions be clearly stated, related to the federal interest in the particular program, and not violate other constitutional provisions. *Id*. at 207-08.

The Anti-DEI Certification rests entirely on Executive Order 14173 and non-binding DOJ guidance. Congress has not enacted that executive order into law and has not directed that DEI programs be treated as presumptively unlawful. To the contrary, Congress has enacted numerous statutes expressly requiring grantees to operate programs targeting underserved and minority populations. *See, e.g.*, 34 U.S.C. §§ 12291(a)(46), 12291(b)(13)(A); 42 U.S.C. §§ 10406(a)(3), 10411(d)(3); 15 U.S.C. §637(a)(5)-(6). Courts have repeatedly found that analogous anti-DEI certification requirements exceed the executive's constitutional authority. *See, e.g., King Cnty. v. Turner*, No. 2:25-cv-00814 (W.D. Wash. June 3, 2025); *Chi. Women in Trades v. Trump,* 1:25-

cv-02005 (N.D. Ill. Apr. 14, 2025); *Rhode Island Coalition Against Domestic Violence v. Bondi*, 1:25-cv-00279 (D.R.I. June 26, 2025).

The Immigration Certification imposes immigration-related obligations on every federal financial assistance recipient with no nexus to any programmatic interest Congress has identified in authorizing any particular grant. Congress has not authorized the executive branch to condition federal financial assistance on recipients' compliance with the Administration's immigration enforcement priorities. To the contrary, courts have consistently held that the executive may not impose immigration-related conditions on federal funding that Congress has appropriated for other purposes. *See, e.g., City of Providence v. Barr*, 954 F.3d 23, 31-34 (1st Cir. 2020) (striking down immigration conditions on law enforcement grants); *California v. U.S. Dep't of Transp*., 1:25-cv-00208 (D.R.I. June 19, 2025) (holding agency lacked authority to impose immigration enforcement conditions on transportation funding). Congress has in multiple statutes expressly authorized—and in some instances required—grantees to serve populations regardless of immigration status. *See, e.g.*, 34 U.S.C. §§ 12291(a)(46), 12341(b)(2); 42 U.S.C. §§ 10402(14), 10406(a)(3); 22 U.S.C. § 7105(b).

And the Terrorism Certification has no statutory basis at all. Congress has enacted specific legislative frameworks around terrorism, *see* 18 U.S.C. §§ 2339A–B, § 2331, with carefully defined elements, scienter requirements, and due process protections. The Administration cannot bypass those frameworks by inserting an ill-defined, universal grant certification in their place. *City of Chicago v. Barr*, 961 F.3d 882, 892 (7th Cir. 2020).

With respect to all three certifications, the executive may not override Congress' statutory prerogative by attaching unauthorized certification requirements to SAM registration. Courts have found this very type of executive action—imposing ideologically motivated conditions on federal grants without congressional authorization—to violate the Spending Clause and the separation of powers. *See, e.g.*, *City of Providence v. Barr,* 954 F.3d 23, 34-35 (1st Cir. 2020) (finding that DOJ may not "impose by brute force" immigration-related grant conditions "to further its own unrelated law enforcement priorities."). The PRA does not give GSA authority to accomplish through an information collection what Congress has not authorized and the Constitution forbids.

III. The Proposed Certifications Will Create Conflicts with Court Orders

Multiple federal courts have issued preliminary injunctions and final judgments blocking the Administration's efforts to impose DEI certification requirements on federal grant recipients. *See, e.g., Chicago Women in Trades, 1:25-cv-02005 (N.D. Ill. Mar. 27, 2025)*; *NAACP v. U.S. Dep't of Educ*., 779 F. Supp. 3d 53 (D. Md. 2025); *Am. Fed'n of Teachers v. U.S. Dep't of Educ*.; *Nat'l Educ. Ass'n v. U.S. Dep't of Educ.*, 1:25-cv-00091 (D.N.H. Apr. 24, 2025). Courts have also repeatedly blocked attempts to impose immigration enforcement conditions on federal grants not authorized by Congress. *See*, e.g., *City of Providence v. Barr*, 954 F.3d 23 (1st Cir. 2020); *California v. U.S. Dep't of Transp*., (D.R.I. June 19, 2025).

Now, by attempting to embed these requirements into the SAM registration process—a universal prerequisite for receiving any federal financial assistance from any agency through any grant program—the Administration seeks to evade these rulings. Recipients who are protected by injunctions against specific agency-level DEI certifications or agency-specific immigration

enforcement conditions would nonetheless be required to attest to these certifications in order to remain eligible for federal funding. Navigating that conflict will create substantial new burdens on organizations protected by injunctions—many of which have already mounted costly legal challenges to vindicate their rights.

IV. GSA's Burden Estimate Is Grossly Inadequate

The PRA requires a "specific, objectively supported estimate of burden." 44 U.S.C. § 3506(c)(3); 5 CFR §1320.8(a)(4). GSA estimates that the revisions to the information collection will increase the burden of SAM registration to an average of 2.75 hours per registrant,[11] an increase of 0.25 hours over the burden estimate for the current information collection.[12] This burden estimate is facially deficient with respect to the new certification requirements.

For any federal funding recipient whose programs touch on immigration services, public advocacy, services for underserved communities, or any other activities that might be characterized as DEI, the new certifications will impose significant burdens. For those organizations—which includes many nonprofits that receive federal funding—compliance with the proposed certifications will require: (1) a legal assessment of whether existing programs could be characterized as violating the Administration's contested interpretation of antidiscrimination law or violating the Immigration Certification or Terrorism Certification; (2) a review of the non-exhaustive list of ill-defined practices that "may violate" federal law; (3) consultation with legal counsel about FCA exposure and whether existing grant terms conflict with proposed SAM certifications; and (4) frequent re-assessment as the Administration's interpretations evolve. None of this is captured in a 2.75-hour overall burden estimate—much less in the mere 15 minutes (0.25 hours) of additional burden GSA claims the new certifications will impose.

The discussion of burden in GSA's supporting statement does not directly discuss the new DEI, immigration, or terrorism certifications. It says only that its estimated burden increase of 0.25 hours (15 minutes) per applicant "is due to the increased compliance with Executive Order requirements." This is patently insufficient. A revision that dramatically expands the substantive obligations of 222,760 registrants requires a meaningful and specific burden analysis. GSA has not even attempted to provide one.

A. GSA Did Not Meaningfully Assess the Burden on Small Entities

The PRA requires that GSA consider how to minimize the burden on small entities specifically, including through exemptions or simplified requirements that take into account the resources available to small organizations. 44 U.S.C. § 3506(c)(3)(C). Instead of making a meaningful attempt to address this requirement, GSA copy-and-pasted language that was used to support a

[11] *See* GSA, *Justification, Part A: Supporting Statement*, "System for Award Management Registration Requirements for Financial Assistance Recipients," OMB Control No: 3090-0290 (Feb. 18, 2026), available at: https://www.regulations.gov/document/GSA-GSA-2026-0001-0007.

[12] *See* GSA, *Justification, Part A: Supporting Statement,* "System for Award Management Registration Requirements for Financial Assistance Recipients," OMB Control No. 3090-0290, ICR Ref. No. 202311-3090-002, (Mar. 12, 2024) (hereinafter 2024 SAM Supporting Statement), available at: https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202311-3090-002

prior revision of this information collection, and which has no bearing on the current changes under review.

The "Burden on Small Business" section in GSA's supporting statement states:

> If a registrant is already registered in SAM with the intent to pursue Federal grant, cooperative agreement, or contract awards, there is no new burden. Also, small entities are not likely to have an owner, predecessor, and/or subsidiary that would require reporting. However, it is minimally burdensome for a small entity to provide the name of its immediate and highest-level owner, should this be applicable.

This language is copied verbatim from GSA's 2024 submission in support of a previous revision to this information collection. *See* 2024 SAM Supporting Statement at 2-3. At that time, GSA sought PRA review of statutorily required changes that would require entities to disclose their parent and subsidiary relationships when registering for SAM. The language about ownership disclosure has absolutely nothing to do with the new DEI, immigration, and terrorism certifications proposed in the current revision. GSA was so careless that it even recycled the prior language that says "there is no new burden" for current registrants—even though this is not true of the current proposal. GSA's own estimate acknowledges that the proposed revisions would increase the overall burden (from 2.5 to 2.75 hours). GSA cannot satisfy its obligation to consider the burden on small entities by copy-and-pasting irrelevant language from a past submission.

The copy-and-paste approach makes clear that GSA did not actually consider the burden that the new certifications impose on small entities such as small nonprofit organizations, which represent a large share of federal financial assistance recipients. Small nonprofits often lack in-house legal counsel or dedicated compliance staff. Under the proposed certifications, every small nonprofit with any programming conceivably related to DEI—like staff training, community outreach, or programs that serve underserved communities—must assess whether those activities could be characterized as violating the Administration's novel and ill-defined understanding of antidiscrimination law. The cost of obtaining legal advice on this question is not trivial and is not captured in GSA's burden estimate. Many small organizations will simply abandon lawful programs rather than incur this cost.

This failure of analysis is not merely a technical deficiency. The PRA's small entity requirements exist to protect precisely these organizations. GSA is required to consider the impact on small entities and make efforts to further reduce the burden on the smallest organizations. Copying unrelated language from a prior supporting statement does not meet GSA's obligation to conduct an actual analysis of the burden on small entities.

V. The Information Collection is Duplicative

Under 44 U.S.C. § 3506(c)(3)(B) and 5 CFR § 1320.8(b)(1), GSA must certify that a proposed collection is "not unnecessarily duplicative of information otherwise reasonably accessible to the agency." When GSA first added certifications and representations to the SAM registration process in 2018, it justified that expansion by promising a concrete burden reduction: the SAM certifications would allow individual agencies to stop collecting assurance forms with each application, GSA claimed, and would "reduce the unnecessary, duplicative practice of agencies requesting certifications and representations with the submission of each application and lead to

phasing out the use of the SF-424B, thereby decreasing the burden level of Federal grant recipients and Federal agencies."[13] GSA's 2018 supporting statement was explicit that the utility of adding certifications to the SAM registration process was to eliminate the need for each agency to collect certifications individually, and that it would render obsolete the assurances required as part of the Application for Federal Financial Assistance.

But the Standard Form 424B was not phased out. In fact, it was recently reauthorized for use through 2028.[14] All 51 grant-making agencies still require applicants submitting the Application for Federal Financial Assistance, SF-424 to certify compliance with the list of assurances contained in SF-424B. Individual grant awards also typically require certification to award-specific terms and conditions, covering many of the same obligations.

Because the promise of a reduced burden elsewhere in the grant application process never materialized, adding certifications to the SAM registration process served only to increase the burden on registrants by adding duplicative requirements. Now, without eliminating this pre-existing duplicative burden, GSA proposes to add yet more substantive certification obligations at the SAM registration stage. GSA cannot satisfy its PRA obligations to certify non-duplication under these circumstances.

VI. The Comment Period is Inadequate

The PRA requires that before submitting a proposed collection to OMB, an agency must provide 60-day notice in the Federal Register. 5 CFR § 1320.8(d)(1). When the actual text of the collection instrument is not published as part of the notice, the agency "should provide more than 60-day notice," to allow time for members of the public to receive and respond to the proposed information collection. 5 CFR § 1320.8(d)(2)(i)-(ii).

GSA published notice on January 28, 2026, with a comment deadline 60 days later on March 30, 2026. But the Federal Register notice did not include a copy of the proposed information collection. Instead, it directed requesters to obtain the information collection documents from GSA. When a supporting statement for the information collection was eventually published on regulations.gov on February 10, 2026, it included an incorrect redline of the proposed revisions, misleading commenters about the nature of the changes. GSA did not withdraw that document and publish an accurate and comprehensible version of the proposed revisions until February 18, 2026.[15]

The public therefore had only approximately 40 days to meaningfully review and comment on the proposal, not the required 60 days. The 60-day requirement exists precisely so that affected parties can analyze the actual burdens imposed and provide meaningful, substantive comment. Truncating that period by nearly three weeks violates the PRA. GSA must extend the comment

[13] *See* GSA, *Supporting Statement*, "System for Award Management Registration Requirements for Prime Grant Recipients" OMB Control No: 3090-0290, ICR Ref. No. 201810-3090-004, (Dec. 20, 2018), available at: https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-3090-004.

[14] See OMB, Notice of Action: Approved Without Change, "SF-424B Assurances for Non-Construction Programs," OMB Control No. 4040-0007 (Jul. 7, 2025) (approving information collection through July 31, 2028), available at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202505-4040-002.

[15] *See* supra note 8.

period by at least 20 additional days from publication of a Federal Register notice containing the complete certification text.

VII. Conclusion

The proposed certifications are legally defective, administratively unworkable, and would impose substantial, unjustifiable burdens on the thousands of organizations that depend on federal funding to serve their communities.

For all the reasons described above, we urge GSA to withdraw its proposal to revise the information collection governing the SAM registration process.

Sincerely,

Diane Yentel
President & CEO
National Council of Nonprofits