

March 30, 2026

Submitted via www.regulations.gov

U.S. General Services Administration
1800 F Street NW
Washington, D.C., 20405

Re: OMB Control No. 3090-0290; Docket No. GSA-2026-0001; Sequence No. 2; System for Award Management Registration Requirements for Financial Assistance Recipients (FR Doc #2026-01676)

To Whom It May Concern:

Education Law Center (“ELC”)¹ submits this comment in opposition to the General Services Administration’s (“GSA”) proposed changes to certifications required for federal grant registration with the System for Award Management (“SAM”). These proposed certifications attempt to place restrictive conditions on hundreds of thousands of federal funding recipients, largely without the requisite authority. ELC’s comment focuses on one of the three proposed changes, which would have significant implications for federal grantees in public education: a new certification that imposes restrictions on diversity, equity, and inclusion programs and activities (“anti-DEI certification”).²

First, GSA misstates current law and risks chilling the lawful efforts of federal grantees to ensure equal opportunity. GSA’s current information collection already requires recipients to certify compliance with the U.S. Constitution’s Equal Protection Clause and specific federal laws, including Title VI of the Civil Rights Act of 1964 and the False Claims Act, as well as regulations, executive orders, and public policies governing federal financial assistance. The anti-DEI certification would require recipients to certify compliance with these same authorities, but the proposal also seeks to add conditions that are not required by law and some that contravene existing law.

For example, GSA states that it is proposing the anti-DEI certification in order to “align” with “updated executive branch guidance,” including Executive Order 14173³ and the U.S. Department of Justice’s Guidance for Recipients of Federal Funding Regarding Unlawful

¹ ELC is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations.

² Gen. Serv. Admin., *Supporting Statement: 3090-0290 System for Award Management Registration Requirements for Financial Assistance Recipients* 8 (proposed Feb. 18, 2026), <https://www.regulations.gov/document/GSA-GSA-2026-0001-0007>.

³ Exec. Order No. 14173, 90 Fed. Reg. 8633.

Discrimination.⁴ But the DOJ Guidance by its own admission is “non-binding,”⁵ and a federal district court has granted a partial preliminary injunction against Executive Order 14173, prohibiting the Department of Labor from enforcing its anti-DEI certification requirement.⁶ GSA goes on to cast legal doubt on the use of “‘cultural competence’ requirements, ‘overcoming obstacles’ narratives, [and] ‘diversity statements,’” even though federal courts including the U.S. Supreme Court have long recognized diversity as a legitimate interest and likewise have viewed inclusive policies to achieve that interest as laudable.⁷ Furthermore, GSA’s proposed anti-DEI certification is inconsistent with recent court orders striking down a similar DEI-related certification for federal funding recipients.⁸

Put simply, many efforts to advance DEI are lawful, and in some instances they are even required by law. But a federal grantee may be chilled from engaging in otherwise permissible conduct due to the threatening language contained in the proposed certification. By listing legitimate practices aimed at reducing discrimination and ensuring equal educational opportunity as violative of antidiscrimination laws, GSA is misstating the law and thus misleading federal grant recipients.

Second, the anti-DEI certification is vague. One of the constraints on federal action under the U.S. Constitution’s Spending Clause is the requirement that the government provide clear notice to funding recipients about the conduct expected of them. GSA’s proposed certification fails to meet this requirement. Federal grantees likely would not know how to comply because the proposed provision uses unclear terms or phrases without properly defining them. Indeed, neither GSA’s notice for public comment nor the proposed certification language itself defines, for example, “diversity,” “equity,” “inclusion,” or “accessibility.” Forcing federal grantees to certify that they will not engage in certain “discriminatory practices” allegedly perpetuated by or stemming from DEI, but not making clear what those specific practices are, would make it difficult, if not impossible, to satisfactorily comply with the anti-DEI certification.

Third, if adopted, the new certification comes with potentially dire financial consequences for state education agencies, school districts, and education-related nonprofit organizations that offer, for example, education services for pre-school children, low-income or rural students, or

⁴ Memorandum From U.S. Attorney General Pam Bondi To All Federal Agencies, *Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination* 1-2, 9 (July 29, 2025), https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery.

⁵ *Id.* at 1-2, 9.

⁶ *Chicago Women in Trades v. Trump*, 778 F. Supp. 3d 959, 972 (N.D. Ill. 2025).

⁷ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* (“*SFFA*”), 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 Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1249 (2025) (appeal docketed No. 25-3664, 9th Cir., June 10, 2025); *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., Jan. 13, 2026).

⁸ *See, e.g., Am. Fed’n of Teachers v. U.S. Dep’t of Educ.*, 796 F.Supp.3d 66, 123 (2025) (vacating the U.S. Department of Education’s February 14, 2025 Dear Colleague Letter and related April 3, 2025 certification requiring state education agencies and school districts to comply with the Department’s viewpoints on DEI and its interpretations of Title VI and *SFFA*, thus “causing millions of educators to reasonably fear that their lawful, and even beneficial, speech might cause them or their schools to be punished”); *NAACP v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025) (preliminarily enjoining the April 3, 2025 certification on Fifth Amendment vagueness grounds).

after school programs. Public schools are already chronically underfunded and federal funding for public education, particularly for students with elevated needs, has dropped dramatically over the past year alone. For example, over \$30 million in special education grants was terminated last fall, affecting 14 states.⁹ And though federal grants are a relatively small proportion of overall education revenue, they contribute to a more equitable distribution of critical education funds relative to poverty in nearly every state.¹⁰ But the proposed anti-DEI certification and supporting statement imply that federal grantees, including those already engaged in lawful activities to promote equitable opportunities, must adopt the Trump Administration’s specific viewpoints and policies on DEI or risk forgoing critical federal funding. Imposing this vague and coercive anti-DEI certification would only exacerbate the serious resource limitations already faced by state education agencies, school districts, and education nonprofits.

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Ultimately, the anti-DEI certification threatens civil and criminal liability for those seeking to implement inclusive educational policies to redress historical and ongoing institutional discrimination.¹¹ Civil rights laws—originally created to *protect* historically vulnerable populations—are being weaponized as the basis for prohibiting DEI activities. This anti-DEI certification represents the most recent attempt by the federal government to weaken and delegitimize efforts to ensure equal access to educational opportunity for students across the nation.

For these reasons, Education Law Center urges GSA to withdraw its proposal.

⁹ Mark Lieberman, *Trump Canceled Millions for Special Education Teacher Training. What’s Next?*, Ed. Week (Sept. 8, 2025), <https://www.edweek.org/teaching-learning/trump-canceled-millions-for-special-education-teacher-training-whats-next/2025/09#>.

¹⁰ Danielle Farrie & Robert Kim, *2025 Making the Grade: How Fair Is School Funding In Your State?*, Education Law Center (2025), <https://edlawcenter.org/wp-content/uploads/2025/12/Making-the-Grade-2025.pdf>.

¹¹ The proposed certifications newly require recipients to acknowledge potential criminal and civil liability under the False Claims Act for any “false, fictitious, or fraudulent information.” See *GSA Supporting Statement*, *supra* note 2, at 8.