March 30, 2026

IAE Program Office
Technology Transformation Services
U.S. General Services Administration
1800 F Street NW
Washington, DC 20405

RE: Information Collection; System for Award Management Registration Requirements for Financial Assistance Recipients — OMB Control No. 3090-0290; Docket No. GSA-GSA-2026-0001

To Whom It May Concern:

On behalf of the American Association of University Women (AAUW), we submit these comments in strong opposition to the General Services Administration's (GSA) proposed revisions to the Financial Assistance General Representations and Certifications within the System for Award Management (SAM.gov).

AAUW's Interest and Expertise

AAUW has a direct and longstanding stake in federal policies that shape who can access higher education, scientific research, and public service — and who cannot. Since our founding, we have worked to ensure that those opportunities are open to all women, regardless of race, income, or background. We bring to these comments more than 140 years of research, advocacy, and on-the-ground experience witnessing how federal policy decisions ripple through the lives of women and girls across the country.

That research has produced a detailed, data-driven record of the inequities that persist in American education and the workforce: the student debt gap, the gender pay gap, the stubborn underrepresentation of women in STEM fields, and the compounding disadvantages faced by women of color at every stage of their educational and professional lives. It is that evidence base — not ideology — that grounds our opposition to this proposal. The programs most threatened by these certifications are precisely the ones that respond to documented, federally recognized gaps. Suppressing them does not advance equal opportunity. It entrenches the barriers that remain.

Federal financial assistance is one of the most powerful levers available for expanding opportunity broadly — for funding the research that drives innovation, supporting the institutions

that serve underrepresented students, and enabling the public service careers that communities depend on. AAUW submits these comments because this proposal would undermine that lever, and the consequences would fall hardest on those who have the least margin for error.

This Proposal Repeats an Approach Federal Courts Have Already Rejected

In February 2025, the U.S. Department of Education issued a "Dear Colleague" letter declaring that a broad range of programs in schools and colleges would be treated as presumptively unlawful under Title VI of the Civil Rights Act of 1964. Weeks later, ED followed with a certification requirement — strikingly similar in structure to what GSA now proposes — demanding that states and school districts affirmatively certify they were not engaged in "illegal DEI" as a condition of continued access to federal funding.

Federal courts moved quickly. By April 2025, district courts had issued preliminary injunctions blocking enforcement of both the letter and the certification requirement. On August 14, 2025, U.S. District Judge Stephanie Gallagher issued a 76-page opinion in *American Federation of Teachers et al. v. U.S. Department of Education*, No. SAG-25-628 (D. Md.), vacating both in their entirety as unlawful under the Administrative Procedure Act and the Constitution. The court found that the administration had attempted a "sea change" in Title VI enforcement through guidance rather than lawful rulemaking, that the certification demand was a final agency action adopted without required notice-and-comment, and that the guidance raised serious First Amendment concerns by restricting particular viewpoints in ways the court found likely unconstitutional. DOE appealed, then voluntarily dismissed that appeal on January 22, 2026, allowing the vacatur to stand permanently and nationwide.

GSA's proposal now seeks to accomplish through government-wide SAM registration what the Department of Education could not accomplish through sector-specific certification: condition access to federal financial assistance on certifying compliance with a standard rooted in the same Executive Order 14173 and the same DOJ guidance that courts found vague, viewpoint-discriminatory, and procedurally defective. Because SAM.gov is the central gateway for all federal financial assistance — covering an estimated 222,760 registered entities — this approach would extend that constitutionally infirm framework across every agency and program, regardless of which agency appropriated the funds or what Congress intended. Repeating a rejected approach at greater scale does not cure its legal defects. It compounds them.

The Proposal Exceeds GSA's Authority and Improperly Imposes New Legal Obligations

GSA's authority to revise SAM registration requirements derives from the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–3521, and its administrative role as the government-wide system administrator for SAM.gov. That authority extends to collecting information necessary to

verify grantee eligibility and facilitate reporting under the Federal Funding Accountability and Transparency Act of 2006, 31 U.S.C. § 6101 note. It does not extend to creating new substantive legal obligations that go beyond what Congress has enacted or what existing law requires.

That is precisely what the proposed certifications do. They require grantees to certify compliance not merely with existing federal law — which current SAM certifications already require — but with a particular interpretation of that law advanced by this administration, codified in a non-binding DOJ memorandum, and rooted in an Executive Order that has itself been subject to successful legal challenge. The proposed certifications thereby transmute a guidance document into a binding legal standard and use the SAM registration process as the enforcement mechanism — without notice-and-comment rulemaking, without statutory authorization, and without the procedural safeguards the APA requires for substantive rules.

The new obligations are also institution-wide in scope, reaching far beyond the specific federal funds at issue in any given grant. The Spending Clause permits Congress to attach conditions to federal funding, but those conditions must be: (1) unambiguous, (2) related to the federal interest in the funded program, and (3) not independently unconstitutional. See *South Dakota v. Dole*, 483 U.S. 203 (1987). Conditions that sweep across the entirety of an institution's operations — regardless of which program received the relevant funds or what Congress authorized — satisfy none of these requirements. And where conditions are so coercive as to leave grantees no real choice, the Supreme Court has found they cross the line from permissible inducement to unconstitutional compulsion. See *NFIB v. Sebelius*, 567 U.S. 519 (2012).

Critically, the existing SAM financial assistance certifications — including Standard Forms 424-B and 424-D — already require all recipients to certify compliance with every applicable federal civil rights law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Equal Pay Act. These proposed additions do not close a compliance gap. They create an entirely new and unauthorized layer of obligation that goes beyond what the law requires and beyond what GSA has the authority to impose.

The Proposal Relies on Vague and Politically Driven Standards That Cannot Support Legal Compliance Obligations

At the core of the proposed certifications is the concept of "illegal DEI" — a phrase drawn from Executive Order 14173 and operationalized through a July 29, 2025 Department of Justice memorandum. That memo explicitly describes its contents as "practical recommendations to minimize the risk of violations" — not as a statement of what the law requires or prohibits. It is not a statute. It is not a regulation promulgated through notice-and-comment. It is not a court decision. GSA is now proposing to convert those non-binding "recommendations" into binding

certification obligations, backed by the threat of False Claims Act civil and criminal liability. That is not a permissible use of the SAM registration process.

Courts have already examined this specific definitional problem. In striking down the Department of Education's certification requirement, the court in *AFT v. DOE* found the term "illegal DEI" to be unconstitutionally vague — noting that the administration had offered no meaningful definition and that its "isolated characterizations of unlawful DEI" conflicted with the term's common understanding. A federal district court considering a parallel Department of Labor certification requirement similarly observed that the administration had "studiously declined to shed any light" on what "illegal DEI" actually means — and held that plaintiffs were likely to succeed in showing the standard was unconstitutionally vague and violated free speech rights. Vague standards do not become workable simply by migrating them to a new agency or a new form.

The political dimension of the problem is equally concrete. The proposed certification language draws on examples of "illegal" conduct that include activities many courts and legal practitioners recognize as lawful — including race-neutral outreach, targeted scholarship programs operating within existing legal frameworks, and professional development programming designed to address documented pay and opportunity gaps. By listing such examples without definition, and by tying the consequences of noncompliance to the government's own evolving and contested interpretation, the certifications effectively invite the government to enforce based on ideology rather than law. An administration hostile to a particular organization's mission or constituency can characterize that organization's lawful programs as noncompliant, triggering an investigation, a certification dispute, or a False Claims Act referral, without ever identifying a specific legal violation.

This is not compliance infrastructure. It is a mechanism for ideological gatekeeping. The Supreme Court has made clear that the government may not use funding conditions to compel grantees to adopt the government's preferred viewpoint, or to punish those whose views it disfavors. See *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.*, 570 U.S. 205 (2013); *Rust v. Sullivan*, 500 U.S. 173 (1991). A certification built on undefined terms, rooted in a non-binding memo, and enforced through criminal exposure fails that test.

The Consequences Fall Hardest on Women and Communities Facing Documented Barriers
The administration has characterized these certifications as directed at "illegal" activity. But the programs most at risk are not programs that violate the law. They are programs that respond — lawfully, and often with direct federal encouragement — to documented and persistent inequities

that federal data confirm are real.

Women hold approximately $929 billion — nearly two-thirds — of the country's outstanding student loan debt, despite representing just over half of enrolled college students. Women earning a bachelor's degree graduate owing an average of $2,700 more than their male peers, and Black women carry the highest average debt burden of any demographic group. These disparities compound immediately upon graduation: Black and Hispanic women with bachelor's degrees earn 37 and 34 percent less, respectively, than white men with the same credential. See AAUW, *Deeper in Debt: Women and Student Loans* (2017, updated 2022).

In STEM research — where the federal grant enterprise is most concentrated — women represent just 26 percent of the U.S. STEM workforce, a figure that has grown by only one percentage point over more than two decades. According to the National Science Foundation, women earned only 26 percent of bachelor's degrees in computer science and mathematics as recently as 2020. Women's share of STEM research grants stands at 37 percent — lagging behind their share of active researchers — and attrition is consistent along the career pipeline, from 42 percent of early-career researchers to just 26 percent at advanced career levels. Congress has recognized these gaps as a national concern, drawing on NSF and NCES data in the *Women and Underrepresented Minorities in STEM Booster Act*, H.R. 3124, 119th Cong. (2025). The National Academies of Sciences, Engineering, and Medicine and the National Institutes of Health have both documented that diverse research teams innovate at higher rates — a finding with direct consequences for the return on the federal research investment.

The programs most at risk under the proposed certifications — mentoring initiatives for women in research careers, scholarship programs designed to expand access for historically underrepresented students, outreach at HBCUs and Hispanic-Serving Institutions, professional development addressing pay and advancement gaps — are the lawful responses to these federally documented inequities. The court in *AFT v. DOE* was explicit on this point, stating that race-neutral efforts to promote access and opportunity are not presumptively unlawful under Title VI. None of the programs at risk here treat individuals in ways that courts have found unlawful. The vagueness of the proposed certifications is what makes them so destructive to these programs. When grantees cannot determine with confidence whether a program falls within or outside an undefined prohibition — and when the penalty for guessing wrong includes loss of federal funds and criminal liability — the rational response is to eliminate the program. AAUW administers fellowships and grants and partners with gender-focused programs nationwide. The organizations most likely to be chilled or disqualified under this proposal are those doing the most to ensure that the benefits of federally funded research, education, and public service reach

the full range of Americans who are qualified to participate in them.

Conclusion

The proposed SAM certifications exceed GSA's statutory authority, bypass required rulemaking procedures, and impose new legal obligations grounded in non-binding guidance that courts have repeatedly found constitutionally infirm. They rely on undefined terms designed to induce self-censorship rather than advance legal compliance. And they will fall hardest on the institutions and programs working to address inequities that federal data confirm are real and ongoing.

The existing SAM certifications already require every recipient of federal financial assistance to comply with the law. These proposed additions do not strengthen that requirement — they weaponize it. AAUW urges GSA to withdraw these proposed certifications in their entirety.

Sincerely,

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