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Re: Comments in Opposition to Proposed Amendments to System for Award Management Registration Requirements for Financial Assistance Recipients (FR Doc #2026-01676; Information Collection 3090-0290)

I. Introduction

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) submits these comments in opposition to the General Services Administration (GSA)'s proposed revisions to pre-award certification requirements for GSA's System for Award Management (SAM). GSA's notice and request for comments (Notice) notes that the proposed revisions are intended to "align with updated executive branch guidance," including Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," and the U.S. Department of Justice's July 29, 2025 memorandum (DOJ Memo), Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination." Under the Paperwork Reduction (PRA), the Notice seeks public input on the necessity and the "practical utility" of the proposed changes to certification for registration in SAM, which is a prerequisite to applying for federal financial assistance.

The implications of the proposal, if adopted, are sweeping and would have the potential to impact every sector and community in the country. A certification of this scope, especially one carrying the potentially severe civil and criminal consequences of False Claims Act liability, is not a ministerial revision; it is a substantive compliance obligation. Not only are the proposed revisions unnecessary and unsupported by law, but they also impose significant burdens on the public for which GSA has failed to account. These proposed changes are contrary to the PRA and are vague, ambiguous, and raise significant due process and First Amendment concerns. As such, if finalized the proposal will create confusion about the obligations GSA seeks to require of roughly 222,000 SAM-registered recipients. The Lawyers' Committee urges GSA to withdraw the proposal.

II. Lawyers' Committee Background and Interest

The Lawyers' Committee is a nonpartisan, nonprofit civil rights organization founded in 1963 by the leaders of the American bar at the request of President John F. Kennedy to secure equal justice for all through the rule of law by targeting the inequities confronting Black Americans and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice and ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. As part of this work, the Lawyers' Committee has participated as counsel or *amicus curiae* in cases addressing race, ethnicity, and national origin discrimination in a wide range of subjects, including education, employment, health care and fair housing.

The Lawyers' Committee is committed to defending principles of diversity, equity, and inclusion (DEI). To that end, Lawyers' Committee has represented parties in litigation challenging the current administration's wide-ranging assault on lawful programs advancing equal opportunity. *See, e.g., Chi. Women in Trades v. Trump*, 778 F. Supp. 3d 959 (N.D. Ill. 2025) ("CWIT") (granting preliminary injunction barring U.S. Department of Labor from "requiring any grantee or contractor to make a certification pursuant to section 3(b)(iv) of Executive Order 14173"); *Freedom Network, USA v. Trump*, No. 1:25-cv-12419, Dkt. No. 18 (N.D. Ill. Oct. 2, 2025) (granting preliminary injunction barring U.S. Department of Justice from requiring any grantee or contractor to make a certification pursuant to Executive Order 14173); *Nat'l Dig. Inclusion All. v. Trump*, No. 1:25-cv-03606 (D.D.C.).

GSA's proposal would burden and harm organizations whose work is equity-centered by requiring them to certify to agreement with this administration's ideological preferences and largely unsupported interpretations as to what is and is not lawful with respect to diversity, equity, and inclusion. Indeed, many of the practices related to antidiscrimination and DEI that GSA holds out as potentially unlawful have been upheld by courts or can be administered in lawful ways. The proposal creates unknown legal and financial risk for communities, given the vagueness and ambiguity of the proposed revisions, the existence of successful and/or ongoing challenges to similar efforts by other agencies, and the administration's record of arbitrary enforcement and retaliatory action against recipients that express disfavored views. Through our litigation, advocacy, and policy work pertaining to the implementation of executive orders, agency guidance, and past certification attempts (i.e., certification requirements for State Education Agencies by the U.S. Department of Education in April 2025) focused on diversity, equity, and inclusion,

we have witnessed the immense chilling power on organizations, entities, and nonprofits with equity-driven missions and goals.

III. Summary of GSA's Proposed Revisions

Registration in GSA's SAM.gov system is a universal requirement to access billions of dollars in federal grants, cooperative agreements, loans, or other federal financial assistance. GSA seeks to amend its SAM.gov certification requirements in several significant 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 the False Claims Act (FCA). GSA's Notice states that the proposed revisions are intended to "align with updated executive branch guidance," including Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," and the U.S. Department of Justice's July 29, 2025 memorandum (DOJ Memo), Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination." 91 Fed. Reg. 3,726 (Jan. 28, 2026). GSA's proposed revisions include the Anti-DEI Certification and FCA provisions included below:[1]

- **Anti-DEI Certification:** Section (6) of the Notice 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

[1] The proposed revisions also include the below provisions, not discussed extensively in this comment:

- **First Amendment Certification**: Section (5) of the proposal 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."
- **Immigration Certification:** Section (7) of the proposal 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." Cites 8 U.S.C. § 1324.
  Public Safety Certification: Section (8) of the proposal 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."

"practices that may violate applicable Federal anti-discrimination laws." These examples include:

- "[P]referential treatment based on race or color," which in GSA's view may include:
  - "race-based scholarships or programs;"
  - "preferential hiring or promotion practices;"
  - "access to facilities or resources based on race or ethnicity;" and
  - "the use, in any of the above, of 'cultural competence' requirements, 'overcoming obstacles' narratives, or 'diversity statements.'"
- "Segregation based on race or color," which in GSA's view may include:
  - "race-based training sessions;"
  - "segregation in facilities or resources;" and
  - "implicit segregation through program eligibility"
- "Other unlawful use of race or color as criteria," which in GSA's view may include:
  - "race-based": "'diverse slate' policies in hiring;"
  - "selection for contracts;" and
  - "program participation or resource allocation."
- "Training programs that stereotype, exclude, or single out individuals based on protected characteristics or create a hostile environment."
- "Retaliation by taking adverse actions against employees, participants, or beneficiaries because they engage in protected activities related to opposing DEI practices they reasonably believe violate federal antidiscrimination laws," including "raising concerns," "filing complaints," "objecting to or refusing to participate in" programs, trainings, or policies they view as discriminatory.

- **False Claims Act provision**: The proposal would continue to require recipients to sign an accuracy attestation and comply with the FCA but would require recipients to specifically acknowledge potential criminal and civil liability under the FCA for any "false, fictitious, or fraudulent information."

IV. GSA's Proposed Anti-DEI Certification Provision in an "Information Collection" Exceeds its Authority and Violates the Paperwork Reduction Act

GSA's proposed anti-DEI certification provision exceeds its authority and undermines the goals of the PRA, which aims to reduce federal paperwork burdens on the public while maximizing the utility and clarity of the data collected and ensuring the greatest possible public benefit.[2]

A. GSA lacks the authority to impose new substantive anti-DEI funding conditions through the PRA.

GSA cannot use the PRA, which authorizes agencies to collect information necessary to carry out their statutory functions, to impose substantive anti-DEI conditions on federal funding. The responsibilities delineated in the statute relate to the administrative functions of information collection within the federal government and the standardization of practices and procedures for that information collection across agencies. *See* 44 U.S.C. § 3506. In other words, the PRA provides a process by which the federal government may collect information consistent with recipients' *existing* legal obligations. It does not, however, convey substantive policy making powers to create new regulatory requirements that are not aligned with accepted interpretations of relevant federal antidiscrimination law and obligations, especially when those requirements will apply to all entities that apply for or receive federal funding through SAM. *See* 44 U.S.C. § 3506.

The proposed anti-DEI certification is not the type of paperwork efficiency measure contemplated by the PRA. The PRA does not authorize GSA to create and impose significant new substantive anti-DEI 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." *Steele v. United States*, 144 F.4th 316, 323 (D.C. Cir. 2025). GSA, therefore, cannot use the PRA as a vehicle to impose new substantive anti-DEI obligations on recipients without express Congressional authorization. The authority to set the

[2] While this comment is focused on the proposed anti-DEI certification (Section (6)), GSA's proposed certifications about immigration (Section (7)) and public safety (Section (8)) raise similar concerns about GSA's unauthorized imposition of new substantive requirements. And, like the anti-DEI certification, these provisions are so vague and coercive that any supposed utility is far outweighed by the burdens they impose on the public.

substantive conditions of grants rests with Congress, exercised through the Spending Clause. GSA's attempt to impose new substantive government-wide anti-DEI certification requirements through a seemingly ordinary SAM registration update thus violates Constitutional separation of powers.[3] Nor does the agency cite to any independent statutory authority to establish government-wide grant conditions to advance the administration's anti-DEI policy objectives. The GSA was authorized by the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 101, to manage federal property, procurement, and administrative services.

B. GSA's proposed anti-DEI certification provision is not "necessary" or "useful" as required by the PRA.

The PRA requires OMB to determine, before approving a proposed collection of information, that the collection is "necessary" and has "practical utility." *See* 44 U.S.C. § 3508 (1995), and 5 C.F.R. § 1320.3(l) (1995) ("Practical utility means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects . . . in a useful and timely fashion.").

To the extent that GSA believes its proposed anti-DEI certification does *not* impose new funding conditions, the proposal lacks practical utility and is duplicative and redundant of existing requirements. Recipients of federal funds are *already* required to certify through SAM that they "[w]ill comply with all applicable requirements of all other federal laws, executive orders, regulations, and public policies governing financial assistance awards."[4]

Nor does the anti-DEI certification provision have any useful illustrative value. As discussed below, the proposal provides a few examples of DEI-related practices that "may" – or may not – be unlawful, depending on how they are administered. But *any* practice is unlawful if administered in an unlawful manner; GSA's circular reasoning serves no useful or practical purpose. Instead, it aims to chill and deter recipients and applicants from maintaining even lawful DEI programs.

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[3] The proposed certification requirement may also implicate the major questions doctrine, which requires that, when an agency claims authority to decide a question of vast economic and political significance, it must point to clear congressional authorization for that specific power. See *West Virginia v. EPA*, 597 U.S. 697 (2022).

[4] GSA, *SAM.gov Entity Registration Checklist*, app. 1, § 6 (Jan. 2025), https://sam.gov/sites/default/files/2024-11/entity-checklist.pdf.

C. GSA's anti-DEI certification proposal does not maximize the "clarity" of the data collected, as the PRA mandates.

The proposed anti-DEI certification vagueness significantly undermines any practical utility of the information GSA seeks to collect. The lack of clarity regarding key terms in the proposed certification leaves potential and actual recipients to speculate as to what they are certifying compliance with.

In numerous places the proposed anti-DEI certification refers to executive orders and guidance without providing any definition or specific examples to guide evaluation of compliance. For example, Section (6) of the proposal mandates that recipients "[w]ill comply with the U.S. Constitution, all Federal laws, and relevant executive orders prohibiting unlawful discrimination on the basis of race or color in the administration of federally funded programs (See Titles VI and VII of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment, and 2 C.F.R. § 200.303 Internal controls)."[5] Yet the proposed anti-DEI certification does not define or list what GSA considers to be the universe of "relevant executive orders" or "Executive branch guidance," and therefore does not provide clarity to recipients about their obligations.

As a general matter, any condition that requires compliance with unspecified "relevant executive orders" or "relevant Executive branch guidance" is impermissibly vague in violation of longstanding due process guarantees. Both executive orders and sub-regulatory guidance are subject to rescission and/or change unless and until they are codified by law. To the extent that the proposal refers to Executive Orders 14151 and 14173, key provisions of those executive orders and agency action taken to implement them are the subject of numerous ongoing legal challenges and have been enjoined by several courts. *See e.g., Chi. Women in Trades v. Trump,* 778 F. Supp. 3d 959 (N.D. Ill. 2025); *Nat'l Council of Nonprofits v. McMahon*, No. 1:25-cv-13242-MJJ, Dkt. No. 88, at 11 (D. Mass. Feb. 25, 2026); *City of Chi. v. Dep't of Just.*, No. 25 CV 13863, 2026 WL 114294 (N.D. Ill. Jan. 15, 2026); *Seattle v. Trump,* No. 2:25-cv-01435-BJR, 2025 WL 3041905 (W.D. Wash. Oct. 31, 2025); *Freedom Network USA v. Trump*, No. 25-C-12419, 2026 WL 800392, at *11, 15 (N.D. Ill. Mar. 23, 2026). Similarly, several of this administration's sub-regulatory guidance documents have been enjoined or vacated by the courts. *See e.g., Am. Fed'n of Tchrs v. Dep't of Educ.,* 796 F. Supp. 3d 66 (D. Md. 2025) (vacating a guidance letter from the Department of Education, and explaining that the letter "says to teachers and schools 'if

[5] Similarly, in Section (5) the proposed certification requires that the recipient "[w]ill comply with the U.S. Constitution, all Federal laws, and relevant Executive branch guidance in promoting the freedom of speech and religious liberty in the administration of federally- funded programs."

you engage in DEI practices we deem impermissible, you will be punished' but does not provide any clarity on what DEI practices are impermissible.").[6]

Moreover, the proposed anti-DEI certification refers to purportedly "discriminatory practices, including those labeled as" DEI programs, without defining those terms. Those terms also are not defined in executive orders or Executive branch guidance, including Executive Orders 14151 and 14173, or the July 2025 Department of Justice memo "Guidance for Recipients of Federal Funding on Unlawful Discrimination," (DOJ Memo) with which the proposal seeks "alignment." The DOJ memo, by its own terms, was non-binding guidance ("this guidance identifies "Best Practices" as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls; these are not mandatory requirements but rather practical recommendations to minimize the risk of violations").

The proposed anti-DEI certification goes on to list examples of practices "that may violate applicable Federal anti-discrimination laws," but does not explain the circumstances under which those practices would actually constitute a violation. In fact, many of the cited practices have been upheld by courts or can be administered in lawful ways. For instance, the proposal 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. *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."). The proposal also calls into question the use of diverse slate policies, even though they may be implemented in a lawful manner, particularly at the recruitment or interview stage. *See Perkins Coie v. Dep't of Just.*, No. 1:25-cv-00716-BAH, Mem. Op., Dkt. No. 185, at 58 (D.D.C. May 2, 2025) ("the Mansfield Rule expressly does not establish any hiring quotas or other illegally discriminatory practices, requiring only that participating law firms consider attorneys from diverse backgrounds for certain positions"). Listing these practices as potentially violating nondiscrimination laws, without more, is misleading and coercive. When coupled with the

[6] The Department conceded vacatur, effectively recognizing the unconstitutionality of the guidance. *See Nat'l Educ. Assoc. v. Dep't of Educ.,* No. 25-cv-00091, Joint Mot. to Dismiss, Dkt. No. 99 (D.N.H. Feb. 3, 2026).

threat of False Claims Act and other liability, these examples also would have a major chilling effect on recipients' lawful conduct.

Similarly, the proposed anti-DEI certification 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 training sessions, study spaces, events, or student groups with a race-related theme or focus are lawful so long as they are open to everyone and do not create a racially hostile environment. *See e.g., Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024) (affirming district court's order preliminarily enjoining the operation of provision of the Individual Freedom Act, Fla. Stat. § 760.10(8), which made it unlawful discrimination to require employees to attend trainings discussing race, color, sex or national origin in particular circumstances). And courts have rejected claims that anti-discrimination, DEI or implicit bias trainings discussing race are categorically illegal; whether a training creates a hostile work environment is a fact-specific inquiry. *See Diemert v. City of Seattle*, 776 F. Supp. 3d 922, 938-941 (W.D. Wash. 2025), *appeal filed*, No. 25-1188 (9th Cir. Feb. 5, 2025) (dismissing on summary judgment plaintiff's claim that the city's mandated DEI training programs that discussed race created a hostile work environment for him as a white male; finding that "[t]he claim that efforts to address racism in the workplace—such as D.E.I. initiatives—are themselves racist presents a striking paradox " and while the city's trainings "no doubt contained statements about race . . . exposure to material that discusses race does not by itself create an unlawful hostile-work environment"); *De Piero v. Pa. State Univ.*, No. 23-cv-2281, 2024 WL 128209, at *8 (E.D. Pa. Jan. 11, 2024) (noting that discussing and providing trainings on "implicit bias," particularly "in the aftermath of very real instances of racialized violence like the murder of George Floyd does not violate Title VII"); *Young v. Colo. Dep't of Corr.*, No. 22-cv-00145, 2023 WL 1437894, at *8 (D. Colo. Feb. 1, 2023) (a "general challenge to the contents of" an "Equity, Diversity, and Inclusion Training" was insufficient to show a hostile work environment), *aff'd*, 97 F.4th 1242 (10th Cir. 2024). Likewise, courts have rejected retaliation claims based on general opposition to DEI practices or diversity goals; such claims are subjected to fact-specific inquiries and must be based on knowledge, not speculation. *See Vavra v. Honeywell Int'l, Inc.*, 688 F. Supp. 3d 758, 772 (N.D. Ill. 2023), *aff'd*, 106 F.4th 702 (7th Cir. 2024) (holding that speculation is not enough to rise to the level of objective reasonableness because the plaintiff, who claimed retaliatory discharge for refusing to take a required online

unconscious bias training, never even opened it or looked at it to know whether the content was discriminatory; a plaintiff's belief must be rooted in actual knowledge, not assumptive speculation).

The inclusion of such mischaracterizations in the proposed anti-DEI certification—without any acknowledgement of the many ways such programs can be implemented lawfully— demonstrates the overreach. As courts have observed, the administration may not advance its own interpretation of discrimination through the threat of the loss of federal funding in ways that are "inconsistent with well-established legal precedent." *City of Seattle v. Trump*, 808 F. Supp. 3d 1204, 1216 (W.D. Wash. 2025) (citations omitted); *see also City of Chi.*, 2026 WL 114294, at *6 (N.D. Ill. Jan. 15, 2026) (citing *Seattle v. Trump*); *Freedom Network USA v. Trump*, No. 25-C-12419, 2026 WL 800392, at *10 (N.D. Ill. Mar. 23, 2026) (finding "language in the J21 Order . . . signals an expansion in the types of conduct that the Executive now believes violates the federal civil rights and discrimination laws.") Put plainly, "the 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." *Am. Fed'n of Tchrs,* 796 F. Supp. at 107 (D. Md. 2025). Here, GSA, which does not enforce relevant antidiscrimination laws, would require recipients to adhere to its interpretation of Title VI, which departs 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.

Indeed, the administration openly acknowledges that it interprets certain legal requirements far differently than they were previously understood by Congress, the executive, or the courts. The anti-DEI executive orders repeatedly cast themselves as departing drastically from the practices of prior administrations. *See, e.g.*, 90 Fed. Reg. 8339 ("The Biden Administration forced illegal and immoral discrimination programs, going by the name 'diversity, equity, and inclusion' (DEI), into virtually all aspects of the Federal Government," causing "immense public waste and shameful discrimination. That ends today."). On February 5, 2025, Attorney General Bondi stated that EO 14173 made clear that "policies relating to" DEI and DEIA "'violate the text and spirit of our longstanding Federal civil-rights laws'" and that the Department of Justice would "investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities[.]" Thus, the Notice's reference to alignment of certification with the anti-DEI EOs

and other federal pronouncements increases ambiguity and confusion for recipients regarding GSA's proposal.[7]

Finally, the singular focus in Section (6) of the proposed anti-DEI certification on race or color discrimination and Titles VI and VII of the Civil Rights Act of 1964 creates additional confusion for recipients evaluating compliance. The proposal does not address discrimination based on national origin, which is also prohibited by Titles VI and VII. And Title VII prohibits discrimination on other basis in addition to race and color, such as sex (including pregnancy, sexual orientation, and gender identity) and religion, but the proposal does not address discrimination on those bases. Moreover, Title VII only applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b). The proposal appears to require entities with fewer than 15 employees applying for federal funding to certify compliance with a federal law that does not apply to them.

V. The Proposed Anti-DEI Certification Would Burden the Lawyers' Committee and Its Equity-Driven Nonprofit Clients, and Harms the Broader Communities Served.

If approved, GSA's proposed anti-DEI certification would burden and harm clients and communities served by the Lawyers' Committee by requiring them to certify to agreement with this administration's ideological preferences and interpretations as to what is and is not lawful with respect to diversity, equity, and inclusion. The proposed anti-DEI certification also creates unknown legal and financial risk for these clients and communities, given the vagueness and ambiguity of the proposed revisions and the administration's record of unlawful and retaliatory action against recipients that express views disfavored by the administration.

[7] The July 2025 DOJ memo is itself replete with inaccurate, incomplete, or misleading statements of the law. For example, "the use of '[f]acially neutral criteria . . . that functions as proxies for protected characteristics' does not presumptively violate federal anti-discrimination law, as the DOJ memo suggests. Multiple courts have upheld the use of race-neutral measures to remove barriers and enhance racial equity and the Supreme Court has consistently declined to review, even where the decision-maker was "well aware" the race-neutral criteria "correlated with race." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864 (4th Cir. 2023), *cert. denied*, 218 L. Ed. 2d 71 (Feb. 20, 2024); *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15 (2024).

A. GSA's proposed anti-DEI certification would burden recipients and potential recipients by forcing them to choose between certifying to ambiguous conditions and forgoing critical grants.

As described above and as numerous courts have concluded, the anti-DEI requirements the administration repeatedly seeks to impose are "rife with vagueness and ambiguity, leaving grantees to speculate what is proscribed and what is permitted." *City of Chi.*, 2026 WL 114294, at *9 (N.D. Ill. Jan. 15, 2026) (citing, *e.g.*, *Santa Clara*, 2025 WL 3251660, at *38 (citations omitted). The anti-DEI certification in the GSA proposal, by virtue of this vagueness and ambiguity, would impose substantial burdens on potential and current federal recipients, including small nonprofit organizations, who would need to retain legal counsel to evaluate what the proposed certification requires and whether they are in compliance to avoid False Claims Act liability.

Recipients would be forced to either accept the GSA's conditions, despite their lack of clarity and potential unlawfulness, or forfeit funding. Accepting grant funds subject to the conditions in the proposed anti-DEI certification would unfairly require recipients to guess what formerly unobjectionable activities are now proscribed by a given grant award. And that uncertainty, created by the GSA, comes with serious risks of enhanced and aggressive False Claims Act prosecutions. Indeed, the proposed anti-DEI certification potentially heightens False Claims Act enforcement risk by requiring 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."[8] This elevation of the False Claims Act in the certification suggests that GSA intends to invoke the statute—and its corresponding severe remedies—if recipients fail to meet the vague conditions in the anti-DEI certification. And the threat of enforcement will likely chill stakeholders from collaborating with recipients that engage in work the Administration could deem "DEI," causing recipients to lose partnerships with stakeholders who may wish to pursue federal funding in the future. Given the vagueness of the anti-DEI certification itself, and the apparent intent to pursue penalties under the False Claims Act for violations, recipients or potential recipients may decide that the risk of certification is simply too high.

But declining to apply for or accept grants, which they would otherwise be eligible to receive, would cause recipients just as much harm. Many recipients will have already

[8] 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 False Claims Act does not cover every error. *See* 31 U.S.C. § 3729(b).

structured their budgets on the expectation of continued federal funding. Without clarification regarding the anti-DEI certification's scope or legality, recipients will be obligated to take steps to mitigate the risk of losing federal funding, which, in some cases, will likely include placing funds in reserve and making cuts to services. The threat of the proposed anti-DEI certification and the accompanying uncertainty about what is required for compliance will interfere with recipients' ability to operate, to provide key services, to plan for the future, and to budget.

B. GSA's proposed anti-DEI certification would unlawfully chill disfavored speech and constrain these organizations' ability to carry out the essential nature of their work.

The proposed anti-DEI certification plainly implicates recipients' First Amendment free speech rights in a burdensome and coercive manner. The proposed certification attaches to recipients of funds across multiple, unspecified programs. Indeed, it does not appear cabined to federally funded activities, and thus regulates recipients' speech outside the contours of the federal program. While the government has wide latitude in making funding decisions, it "may not use funding conditions to regulate speech generally." *Chi. Women in Trades*, 778 F. Supp. 3d at 983 (citing *Rust v. Sullivan*, 500 U.S. 173, 193 (1991)). "[F]unding condition[s] can result in an unconstitutional burden on First Amendment rights" when the government goes beyond "defining the limits of the Government spending program" and extends to "leverag[ing] funding to regulate speech outside of the contours of the federal program itself." *Id.* (citing *Agency for Int'l Dev. v. All. For Open Soc'y Int'l*, 570 U.S. 205, 206 (2013)); see also *Freedom Network USA v. Trump*, No. 25-C-12419, 2026 WL 800392, at *10 (N.D. Ill. Mar. 23, 2026) (citing *CWIT*, 778 F. Supp. 3d at 983). The anti-DEI certification requires recipients to certify that all their programs and activities, including those that receive no federal funds, do not "involve" discriminatory practices, including those labeled as DEI or DEIA. As such, it likely violates the First Amendment. *See Agency for Int'l Dev.*, 570 U.S. at 218-19.

Further, the proposed anti-DEI certification is intended to discourage recipients from adopting any policies or programs that the current administration might deem to be "DEI." Because the certification seeks to regulate programs "labeled as … DEI," it is viewpoint specific in violation of the First Amendment. *See Thakur v. Trump*, 148 F.4th 1096, 1107–08 (9th Cir. 2025) (finding that "DEI [and] DEIA . . . are not merely neutral topics" and "convey the viewpoint that the exclusion of historically disadvantaged groups is undesirable," in violation of the "bedrock principle" that the government cannot "leverage

its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints"). This is reinforced by GSA's proposed language in Section 6(v), which requires recipients to certify that retaliation against individuals who "engage in protected activities related to opposing DEI practices," "may be" unlawful, without any mention of retaliation against those who *promote* DEI practices.

Moreover, multiple public 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.[9] 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. The administration has made it very clear that whatever it claims is "DEI" is disfavored speech through its executive orders, DOJ memos, and enforcement actions. The vagueness and ambiguity of the proposed anti-DEI certification—coupled with the credible threat of coercive sanctions—impose substantial burdens on Lawyers' Committee clients with equity-focused missions, and on the communities they serve.

C. The proposal's confusing "injunctions" provision creates additional burdens for recipients, including those with existing court orders obtained through successful legal challenges.

GSA's proposal also provides that"[t]o the extent that any of 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

[9] Karen Yourish, Annie Daniel, Saurabh Data, Isaac White, and Lazaro Gamio, *These Words are Disappearing in the New Trump Administration*, N.Y. TIMES (Mar. 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); *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.").

deemed inapplicable to that recipient. All other certifications and representations not directly affected by such order shall remain in full force and effect."

The paragraph implicitly acknowledges that courts have enjoined similar anti-DEI conditions imposed by individual agencies. Despite these losses—and despite the benefit of thorough, reasoned decisions from multiple judges—the GSA puts the onus on recipients to go to court to obtain their own injunction—or face potential False Claims Act or other liability for violating a funding provision that a court or courts have already determined to be invalid.

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GSA's proposal imposing an anti-DEI certification on all potential and actual recipients exceeds its authority and fails to comport with the PRA's requirements. These revisions are neither necessary nor useful, and any potential usefulness is outweighed by the burdens imposed on applicants or recipients of federal funds. These recipients and applicants would be forced to choose between agreeing to ambiguous and likely unconstitutional conditions and forgoing critically-needed funds. Far from reducing burdens on the public, GSA's proposed anti-DEI certification is designed to chill lawful diversity, equity, and inclusion programs by threatening disfavored public and private entities with financial and legal consequences.

Accordingly, GSA should withdraw the proposal. If you have any questions or need additional information, please contact Shatorah Roberson, Senior Policy Counsel, at sroberson@lawyerscommittee.org.

Sincerely,

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Lawyers' Committee for Civil Rights Under Law