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**From:** Kate Hudson  
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**Re: GSA Information Collection Request – System for Award Management Registration Requirements for Financial Assistance Recipients**

**Docket:** GSA-GSA-2026-0001

The Association of American Universities (AAU) submits these comments on behalf of its 69 member research universities based in the United States. Collectively and individually, AAU universities promote national interests by conducting cutting-edge research and educating future generations of scientists and researchers. Their work is aided by federal grants, cooperative agreements, and other financial assistance supporting scientific research, student financial aid, and public service programs of national importance.

AAU and its members are committed to full compliance with all applicable federal anti-discrimination laws, including Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. We are also committed to full compliance with all applicable immigration and anti-terrorism laws, including the Immigration and Nationality Act of 1952, the USA PATRIOT Act of 2001, and the Intelligence Reform and Terrorism Prevention Act of 2004. These commitments are longstanding and not in dispute. AAU does not submit these comments to resist lawful anti-discrimination, immigration, or anti-terrorism requirements.

Rather, AAU writes to raise serious and specific concerns about a General Services Administration (GSA) certification proposal that, in its current form, asks recipients of federal financial assistance to certify compliance with standards that are undefined, subject to active

litigation in the federal courts, and not grounded in settled statutory interpretation. The proposal is drafted so broadly across diversity, equity, and inclusion (DEI), immigration, and anti-terrorism components that it encompasses entirely lawful institutional activities, all while attaching False Claims Act (FCA) consequences to each certification.

For the reasons set forth below, AAU urges GSA to withdraw the proposed certification. At a minimum, GSA should pause any further action pending resolution of active litigation challenging the underlying executive authority to implement and enforce DEI-related certification requirements and revise the proposed certification language to address the legal and practical deficiencies identified herein.

## **Background**

On January 28, 2026, GSA published an Information Collection Request proposing to amend the Financial Assistance General Representations and Certifications within SAM.gov to “align with” Executive Order 14173 (January 21, 2025) and the Department of Justice’s “Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination” (July 29, 2025) (DOJ Memo). GSA subsequently published draft certification language, which it revised on February 18, 2026. The revision removed references to two unrelated topics but left the core DEI certification requirements substantively unchanged.

Federal financial assistance recipients, including AAU member universities, already certify, through SAM and Standard Forms 424-B and 424-D, that they will comply with all applicable federal anti-discrimination statutes. These certifications are signed at the time of initial SAM registration and renewed annually. They are not nominal: institutions take them seriously and organize compliance programs around them. The proposed certification goes materially further. Rather than requiring adherence to the anti-discrimination, immigration, and anti-terrorism statutes themselves – whose text and meaning are well established – the proposal would require institutions to certify compliance with the DOJ Memo’s interpretation of those statutes, which DOJ itself has acknowledged are a collection of non-legally binding suggestions.

That interpretation reflects a significant change in the government’s legal position, and could potentially prohibit programs designed to remedy the effects of past discrimination that have long been understood as lawful. Certifying compliance with an agency’s contested reading of the law is fundamentally different from certifying compliance with the law itself.

## **GSA Should Limit Certification to Standards Grounded in Settled Law and Endorsed by the Courts**

A threshold concern with the proposed certification is that it would require institutions to certify compliance not merely with the text of applicable anti-discrimination statutes as applied

by federal courts, but with the executive branch’s current interpretation of those statutes – an interpretation that federal courts are currently evaluating.

The DOJ Memo, to which the certification seems to require adherence, reflects a marked departure from prior government interpretations of federal civil rights law. It broadly prohibits programs the government characterizes as promoting “illegal DEI,” including programs that universities have long implemented in reliance upon settled understandings of Title VI, Title VII, Title IX, and other statutes. The Department of Health and Human Services (HHS) itself [has acknowledged](#) that its analogous certification “reflects a change in the government’s position.” Federal courts have repeatedly rejected the administration’s position that EO 14173 and implementing guidance constitute settled law.

Multiple courts have enjoined implementation and enforcement of the DEI certification provisions of EO 14173 or have remanded litigation on the merits to the district court level, including but not limited to these cases:

- *Rhode Island Coal. Against Domestic Violence v. Kennedy*, 25-2229, (1st Cir.).
- *Natl. Assoc. of Diversity Officers in Higher Edu. v. Trump*, 25-1189, (4th Cir.).
- *Chicago Women in Trades v. Donald J. Trump*, 25-2144, (7th Cir.).
- *King County v. Turner*, 25-3664, (9th Cir.).
- *City of Seattle v. Trump*, 25-8096, (9th Cir.).
- *San Francisco A.I.D.S. Foundation v. Trump*, 25-4988, (9th Cir.).

While the reach of these injunctions has been limited in the wake of *Trump v. CASA*, 606 U.S. 831 (2025), which generally constrained the imposition of injunctions to provide relief to non-parties, the underlying legal questions they present remain unresolved.

GSA cannot characterize a certification standard as settled when federal appellate courts are actively considering whether the underlying executive authority is lawful. GSA should not finalize certification language that embeds a contested executive interpretation of federal anti-discrimination law, unilaterally bypassing active judicial review. Indeed, the draft certification language includes a section acknowledging that court orders or injunctive relief prohibiting enforcement may render certification requirements inapplicable to certain registrants. This approach could lead to a scenario in which the more than 222,000 SAM registrants are held to differing standards based upon a patchwork of court decisions that can change on a frequent basis.

## **GSA Must Define Key Terms and Provide Clear Notice of What the Certification Requires**

A certification imposed as a condition of federal financial assistance must, at minimum, be sufficiently clear that a reasonable institutional signatory can understand its requirements. The proposed certification fails this standard.

Neither the draft certification text nor the DOJ Memo it references defines the terms central to compliance – such as “illegal DEI,” “programs promoting DEI,” “discriminatory practices” – or the specific institutional activities that would constitute a violation. The DOJ Memo provides only a limited collection of examples of potentially unlawful practices. Institutions are asked to certify they are not doing something without being told clearly what that something is. This vagueness is not a minor drafting issue. It is a structural problem acknowledged even by the administration’s own litigators. During oral argument before the Seventh Circuit on January 30, 2026, judges pressed DOJ attorneys to define “illegal DEI;” the attorneys struggled to provide a workable answer. If the government cannot articulate the standard in an appellate courtroom, institutions cannot be expected to certify compliance with it in a SAM registration form.

The practical consequences of this vagueness are severe. Faced with an undefined standard backed by FCA enforcement risk, many universities will most likely interpret the certification conservatively – curtailing programs that are almost certainly lawful – simply because the certification scope is unclear. That overcorrection does not serve the government’s stated interest in eliminating unlawful discrimination; it only creates compliance anxiety and programmatic disruption.

*Before any certification requirement is finalized, GSA must, at minimum: (1) define the key terms in plain language; (2) provide concrete examples of covered and non-covered institutional activities; and (3) establish a process by which institutions can seek binding guidance on whether specific programs comply with the certification’s requirements.*

## **GSA Should Establish Safeguards Against Disproportionate False Claims Act Exposure**

The proposed certification incorporates the Administrative False Claims Act of 2023 into the list of applicable federal laws transforming what might otherwise be a routine compliance requirement into an acute institutional liability. AAU urges GSA to carefully consider and substantially address this dimension of the proposal before it is finalized.

Research universities operate under hundreds or thousands of active federal grants and cooperative agreements at any given time, spanning agencies such as the National Institutes of Health (NIH), National Science Foundation (NSF), the Department of Energy (DOE), the Department of Defense (DOD), and so on. Under the proposed framework, a single SAM

certification signed annually would serve as the compliance anchor for this entire portfolio. If an institution certifies in good faith but is later found to have operated a program that the government considers a violation of the DEI certification, that certification could be deemed false and material to every federal payment made during the certification period.

The FCA exposure in that scenario is not marginal or hypothetical; it is real and potentially existential. Courts have already identified the structural unfairness of this dynamic. In recent Fourth Circuit litigation in *Natl. Assoc. of Diversity Officers in Higher Edu. v. Donald Trump*, the court described a “lose-lose-lose” situation for institutions subject to DEI certification requirements: they must either sign a certification of uncertain meaning, forgo federal funding, or face FCA exposure if the government later disputes their compliance. Research universities with federal funding that supports not just institutional operations, but ongoing clinical trials, scientific research, and education and training opportunities for students and early-career researchers, are particularly ill-positioned to absorb this kind of uncertainty.

The problem is compounded by the fact that the proposed certification does not include an express materiality statement. Yet GSA’s inclusion of the FCA in the list of applicable laws signals that the government intends to treat false certifications as actionable. Institutions are entitled to know clearly whether and under what circumstances a certification error triggers FCA liability and what good-faith compliance efforts will or will not protect them.

AAU requests that GSA: (1) explicitly address FCA materiality in the certification framework and confirm that de minimis or good-faith compliance errors will not give rise to FCA liability; (2) establish a safe harbor for institutions that rely on published agency guidance in structuring their programs; and (3) provide a meaningful pre-enforcement process before any FCA referral is made based on a SAM certification.

### **GSA Should Protect Federally Funded Research and Academic Programs of Demonstrated National Value**

Independent of the legal uncertainties, the proposed certification will cause immediate and concrete harm to university research programs, student support initiatives, and faculty recruitment efforts that serve compelling national interests. These harms will materialize not because institutions intend to violate the law, but because the certification’s vagueness will make it impossible for institutions to know with confidence which programs the government will regard as compliant.

AAU member universities operate a wide range of programs, mentoring initiatives, research pipeline programs, fellowship and scholarship funds, and community partnership programs that

have been specifically structured to rely on longstanding interpretations of federal civil rights law. Many of these programs are themselves federally funded, designed in collaboration with federal agencies, and in response to longstanding and past federal policy goals aimed at expanding the scientific workforce and reaching underserved communities.

The breadth of the proposed certification could have severe chilling effects. Because it would apply across all federal financial assistance programs, and not just specific grant programs where DEI-related conditions might be contextually relevant, institutions face the prospect of a single, government-wide compliance posture that cannot be calibrated program by program. The result will be a conservative, risk-averse interpretation of the certification that eliminates programs well beyond any reasonable reading of what EO 14173 or the DOJ Memo actually prohibit. These losses are not abstract. Curtailed pipeline programs and diminished access to federally funded research for students from underrepresented communities will impair the federal government's own investments in America's research enterprise and scientific leadership.

*AAU urges GSA to conduct and publish a full programmatic impact assessment in consultation with the research university community before finalizing any certification requirements.*

### **GSA Should Align the Immigration Certification with Settled Constitutional Law and the Plain Text of 8 U.S.C. § 1324**

AAU and its member institutions fully support the enforcement of federal immigration law. AAU member universities are committed to compliance with all applicable federal immigration statutes and do not operate programs designed to shield individuals from federal immigration authorities. That commitment is not in question. What is in question is whether a SAM certification, broadly worded and backed by FCA consequences, accurately describes the legal obligations of research universities with respect to their students, and whether its application to normal educational activities is consistent with settled constitutional law and statutory interpretation. On both counts, AAU has serious concerns.

The draft certification requires federal funding recipients to certify that they will 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 will not “induce an alien to enter or reside in the United States with reckless disregard” of their unlawful status. As applied to research universities, this certification presents serious conflicts with settled constitutional law and existing statutory interpretation that GSA has not addressed.

The harboring certification misapplies 8 U.S.C. § 1324 to the university context. The federal

harboring statute, 8 U.S.C. § 1324(a)(1)(A)(iii), prohibits knowingly concealing, harboring, or shielding undocumented individuals from detection. Courts have consistently interpreted this prohibition to require conduct that substantially facilitates an individual's remaining unlawfully in the United States and actively prevents detection by authorities. Providing education, academic support, or enrollment services to a student regardless of the student's immigration status does not meet this standard. Notably, 8 U.S.C. § 1324 itself expressly carves out employment from the definition of harboring, recognizing that providing services to individuals does not equate to concealing them from the government.

Courts have further held that passive conduct, absent affirmative acts to shield individuals from detection, does not constitute harboring. *See, e.g., United States v. Merkt*, 764 F.2d 266 (5th Cir. 1985) (assisting an alien in obtaining legal status is not "furthering" illegal presence within the meaning of § 1324). The proposed certification's language, certifying that institutions do not "harbor" or "shield" undocumented individuals, is overbroad to the point of ensnaring entirely lawful educational activities that bear no relationship to the conduct the harboring statute targets.

*GSA should either exclude educational institutions from the scope of this certification as applied to standard academic services or provide clear definitional guidance confirming that the provision, enrollment, and administration of educational programs does not constitute harboring or shielding within the meaning of 8 U.S.C. § 1324.*

### **GSA Should Conform the Anti-Terrorism Certification to the Standards Established in Federal Statute and Interpreted by the Supreme Court**

AAU and its member institutions are unequivocally opposed to terrorism in all its forms. Research universities have no interest in funding, subsidizing, or facilitating political violence, and they fully support the federal government's efforts to prevent material support for designated terrorist organizations. AAU member universities are committed to complying with 18 U.S.C. §§ 2339A and 2339B, cooperating with federal law enforcement on national security matters, and taking their obligations under existing anti-terrorism statutes seriously. That is not at issue here. What is at issue is whether a vaguely worded SAM certification, drafted without reference to the legal standards Congress and the Supreme Court have carefully established, accurately captures those obligations or, instead, casts so broad a net as to chill the academic research, instruction, and campus expression that universities are constitutionally obligated to protect.

The draft certification requires recipients to certify that they will not "facilitate ... illegal activities that threaten public safety or national security." As applied to research universities, this certification raises significant First Amendment and academic freedom concerns because it

does not track the legal standard established by Congress and the Supreme Court and is more broadly sweeping than lawful anti-terrorism enforcement.

Existing federal law already comprehensively prohibits material support for terrorism. 18 U.S.C. §§ 2339A and 2339B are among the most frequently enforced federal anti-terrorism statutes and apply to all persons and institutions, including universities. Universities are already subject to these laws, already certify compliance with applicable federal statutes through existing SAM representations, and are subject to vigorous federal enforcement. A duplicative, vaguely worded SAM certification adds no enforcement value while creating significant new compliance ambiguity and anxiety.

The certification does not track the legal standard set forth in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). In *Holder*, the Supreme Court upheld the material support statute, 18 U.S.C. § 2339B, as applied to the specific forms of coordinated support at issue, but emphasized that the statute reaches only material support that is coordinated with or provided under the direction of a designated foreign terrorist organization. The court specifically distinguished material support from “independent advocacy,” “pure political speech,” and “mere membership,” which remain protected under the First Amendment. The proposed SAM certification, which requires recipients to certify they will not “facilitate” activities that “threaten national security,” contains none of these limiting principles and could be read to encompass a wide range of protected academic expression, including classroom instruction on terrorism and extremism, research on designated organizations, and campus speech and debate about contested geopolitical topics.

Universities are committed to protecting academic freedom and free inquiry. The Supreme Court has long recognized that universities occupy a special role in the First Amendment framework. See *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) (academic freedom is “a special concern of the First Amendment”). Research on terrorism, extremist movements, and national security threats is a core academic function, and one that the federal government itself funds and depends upon. Faculty who study, write about, or teach on groups that may have been designated as foreign terrorist organizations are engaged in protected academic inquiry, not material support. A certification requiring institutions to certify that they do not “facilitate” activities threatening “national security,” absent any limiting construction tied to actual material support as defined by statute, risks chilling precisely the research and scholarship that serves the national interest.

The certification could also be weaponized against protected campus speech on contested political topics. Courts have consistently found that political advocacy, protests, and student organizing, even on behalf of causes associated with designated organizations, do not constitute material support for terrorism under *Holder*, unless they involve coordination with and support directed to a designated organization. A vague SAM certification that universities

will not “facilitate” threats to “national security” could be used to pressure institutions into suppressing protected speech well beyond what the law prohibits.

GSA should either remove this certification as duplicative of existing federal statutory obligations or substantially revise it to conform precisely to the legal standards established in 18 U.S.C. §§ 2339A and 2339B and interpreted in Holder v. Humanitarian Law Project, with explicit carve-outs confirming that independent academic research, instruction, and campus advocacy do not constitute facilitation of terrorism within the meaning of the certification.

### **Conclusion: GSA Should Withdraw or Substantially Revise the Proposed Certification Pending Judicial Resolution**

Taken together, the legal uncertainty, definitional failures, FCA exposure, and programmatic harm described above weigh heavily in favor of abandoning this proposal entirely. The legal authority underlying the proposed certification language covering DEI programs is presently before federal courts, and finalizing the rule while that authority is unresolved would be administratively unjustifiable.

Multiple courts have enjoined EO 14173 certification requirements. The Seventh Circuit has the question squarely before it. Other circuit-level challenges are foreseeable. Pursuing a government-wide SAM certification in this environment would impose significant compliance burdens on tens of thousands of institutions, including research universities with federal funding that is not discretionary but based on executive authority, which may be curtailed, modified, or invalidated by judicial decision in the near term. The administrative waste and institutional disruption of that outcome would be substantial.

*AAU, therefore, respectfully requests that GSA:*

- (1) Withdraw this proposed revised information collection requirement; or*
- (2) Extend the public comment period by at least 180 days to allow the regulated community to engage more fully with the legal record as it develops and delay finalization of the certification until the U.S. Supreme Court has resolved the core questions regarding the scope and lawfulness of EO 14173’s certification requirements; and*
- (3) Commit to reopening the comment period if the certification language is materially revised in response to litigation developments or further agency deliberation; and*
- (4) Engage in direct consultation with the higher education community, including AAU, before any revised certification text is published.*

AAU reaffirms, without reservation, its member institutions’ commitment to complying with all applicable federal anti-discrimination, immigration, and anti-terrorism laws. That commitment

does not require, and is not served by, a certification requirement that is legally contested, definitionally vague, and operationally unworkable. The proposed SAM certification, in its current form, asks more than 222,000 federal financial assistance recipients to certify compliance with a legal standard that federal courts have declined to uphold, that the government's own litigators cannot clearly define, and that carries serious FCA consequences that threaten the financial stability of the research enterprise and, in turn, jeopardize the benefits that flow to the federal government and the U.S. economy from that research. That is not a workable compliance framework; it is a source of confusion, litigation, and harm.

AAU urges GSA to withdraw or substantially revise the proposed certification and, at minimum, to delay implementation until the legal questions underlying it are resolved. AAU requests the opportunity to meet and confer with GSA staff directly on this matter and invites further engagement on the concerns raised herein.