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GSA PSA: New Certifications for All Federal Funding Recipients and How to Prepare

Client Alerts

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The General Services Administration (GSA) recently announced proposed updates to certification requirements for federal grantees on the System for Award Management (SAM, available at sam.gov), the GSA-run, official US Government system for, among other things, recipients of federal funding to make representations and certifications about their organizations. These proposed changes, published in a Federal Register notice on January 28, 2026, would impact all entities receiving federal financial assistance, including grants, loans, and cooperative agreements. The new requirements are designed to force a consistently worded, direct, government-facing statement about organizations' diversity, equity, and inclusion (DEI)-related practices and other areas of interest to this administration.

Federal contractors and grantees must now prepare for heightened scrutiny and potential False Claims Act exposure as a result. Organizations may also wish to submit comments, due by March 30, 2026, opposing these changes or seeking further clarification on their intended scope.

BACKGROUND

All applicants for and recipients of federal financial assistance must maintain an active SAM account. Federal agencies must check SAM before awarding federal financial assistance.

This requirement would apply across the federal government, as opposed to the more piecemeal implementation of certification changes we saw from individual agencies over the last year. Because SAM registration is a prerequisite for *all* recipients of federal financial assistance, this proposed rule, if finalized, would reach every organization that receives grants, cooperative agreements, loans, or other federal financial assistance.

According to proposed language released on February 18, (see p. 8 here), there will be three new requirements:

- **Antidiscrimination and DEI.** Financial assistance recipients will be required to certify that they will "comply with the US 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 .... Federal antidiscrimination laws apply to programs or initiatives that involve discriminatory practices, including those labeled as Diversity Equity and Inclusion (DEI)."

- **Immigration.** Recipients will be required 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 the fact that the alien is illegal."

- **Terrorism.** Recipients will be required to certify that they will not "fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security."

We explore each provision further below.

ANTIDISCRIMINATION AND DEI PROVISION

In announcing these new requirements, GSA invoked both Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (issued on January 21, 2025), and the July 29, 2025 memo issued by Attorney General Bondi, entitled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination." Both the executive order and memo adopt a view of federal antidiscrimination law as applied to DEI programs and other diversity initiatives that go beyond existing judicial precedent in certain respects.

In accordance with that view, GSA included a list of "practices that may violate applicable Federal antidiscrimination laws," including noting what it considers to be examples of each:

- "**[P]referential treatment based on race or color**":
    - "race-based scholarships or programs"
    - "preferential hiring or promotion practices"
    - "access to facilities or resources based on race or ethnicity"
    - The above may include "the use of 'cultural competence' requirements, 'overcoming obstacles' narratives, or 'diversity statements.'"
- "**Segregation based on race or color**":
    - "race-based training sessions"
    - "segregation in facilities or resources"
    - "implicit segregation through program eligibility"
- "**Other unlawful use of race or color as criteria**," including "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.

IMMIGRATION PROVISION

This new provision cites 8 U.S.C. § 1324, which imposes criminal penalties on anyone who "brings to or attempts to bring to the United States," "transports, or moves or attempts to transport or move," "conceals, harbors, or shields from detection," an undocumented individual, or "encourages or induces" an undocumented individual "to come to, enter, or reside in the United States." The breadth of this statutory language—and the administration's potentially expansive interpretation of it—warrants careful attention.

For example, under the majority approach adopted by most federal circuits, "harboring" requires some action intended to prevent detection of an undocumented individual by law enforcement; merely providing housing or services to undocumented individuals on the same terms as others is generally insufficient.[1] The Supreme Court has also construed the statute's related "encouraging or inducing" provision narrowly, limiting it to intentional solicitation and facilitation of specific unlawful acts.[2] That said, recent enforcement activity suggests the current administration may take a broader view of these prohibitions. Last year, for example,obtained search warrants for university based on the theory that the university was "harboring" students by declining to provide ICE agents with access to student housing without a judicial warrant.[3] Although the theory laid out in the search warrants is out of step with the approach of most courts of appeals, the warrant was issued, and given the lack of litigation over the warrants, the legal questions it raises remain unresolved.

TERRORISM PROVISION

While the proposed certification requiring grantees not to "fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security" is neutral on its face, it could be used to target organizations characterized as promoting or tolerating political violence, as outlined in a September 2025 National Security Presidential Memorandum and a December 2025 Attorney General Memorandum.

The AG memo defines "domestic terrorism" broadly under 18 U.S.C. § 2331(5) to encompass conduct intended "to intimidate or coerce a civilian population" or "to influence the policy of a government by intimidation or coercion." It also explicitly identifies a range of activities as potential acts of domestic

terrorism—including organized protest activity, doxing of law enforcement, and interference with immigration enforcement.

The Presidential Memorandum and AG memo also identify certain ideological orientations as potential markers of domestic terrorist activity, including opposition to immigration enforcement and support for what it characterizes as "radical gender ideology." Organizations whose programs or public advocacy touch on these areas should be aware that the administration has signaled an intent to scrutinize their activities.

THE LITIGATION LANDSCAPE

Litigation challenging similar DEI certification requirements at individual agencies is ongoing. The Fourth Circuit recently rejected a facial challenge to the certification requirement in EO 14173, *Nat'l Ass'n of Diversity Offs. v. Trump*, No. 25-1189, 2026 WL 321433, at *7-11 (4th Cir. Feb. 6, 2026), but a number of district courts around the country have preliminarily enjoined grant conditions requiring recipients to certify compliance with EO 14173, and those cases are now on appeal. *See, e.g.*, *King Cnty. v. Turner*, 785 F. Supp. 3d 863, 875, 887-89, 894 (W.D. Wash. 2025), *appeal docketed*, No. 25-3664 (9th Cir. Jun. 10, 2025); *Seattle v. Trump*, No. 2:25-cv-01435, 2025 WL 3041905, at *5-9 (W.D. Wash. Oct. 31, 2025), *appeal docketed*, No. 25-8096 (9th Cir. Dec. 29, 2025); *RICADV v. Kennedy*, 2025 WL 2988705, at *12-*15 (D.R.I. October 23, 2025), *appeal docketed*, No. 25-2229 (1st Cir. Dec. 23, 2025).

GSA acknowledges that enforcement of some of the proposed conditions may be barred by court order and thus would be "deemed inapplicable." (see p. 10 here). But that caveat applies only to proposed certifications that are "the subject of an active court order or injunction that is *legally binding on the recipient* and the relevant awarding agency." (*Id.*, emphasis added). Even if such certifications are vacated in individual cases, then, we expect GSA will take the position that they are still free to enforce the certifications against non-plaintiffs.

WHAT COMES NEXT?

The comment period for the proposed certification requirement is currently open and will close on March 30, 2026. Comments are also an opportunity to seek clarification—for example, seeking definitions of any vague terms in the antidiscrimination provision or on the scope of the domestic terror and harboring certifications (which as currently drafted lack any limiting definitions or safe harbors). Commenters should be careful, however, not to make any admissions that could later be used against them if these requirements are finalized, i.e., referring to their own internal policies, procedures or processes.

In preparing for the proposed certifications to go into effect, organizations should assess not only their own direct activities but also those of their subgrantees and partner organizations, as pass-through liability under the False Claims Act can extend to false certifications made at the prime recipient level that cover downstream activity. The government and/or *qui tam* relators will assert that that the

proposed to the government's funding decisions, meaning that a false or inaccurate certification could expose organizations to civil liability under the False Claims Act, 31 U.S.C. § 3729, including potential treble damages and per-claim penalties.

Thus, affected organizations should consider the following steps:

- **Review existing activities related to proposed certifications.** For all of the topics addressed by the proposed certifications, review your organization's existing programs, policies, and practices. Assess the legality of any programs, policies, or practices that may implicate the certifications, decide whether modifications are warranted, and keep appropriate records of having conducted this good-faith compliance assessment. This review should encompass not just your own activities, but also any funding or support you provide to other entities that may be relevant to the certifications.

- **Consider qualifying language.** Especially in situations where there may be ambiguity about the governing law or how to interpret the conditions imposed by these certifications, consider whether to qualify or give context for your certification—for example, by including a standard disclaimer in applications for funding.

- **Evaluate litigation landscape and assess whether to seek injunctive relief.** Monitor pending appeals in ongoing grant conditions cases, as well as any new litigation challenging the SAM certification specifically. Organizations that face particularly acute compliance burdens, or whose programs are directly targeted by the proposed certification language, should evaluate whether to join or initiate litigation to seek relief applicable to them directly.

- **Consult legal counsel.** Consult legal counsel to assess False Claims Act exposure across all three certification areas, evaluate whether any existing court orders provide applicable relief, and develop a compliance strategy tailored to the organization's specific programs and funding relationships. Given the pace of regulatory and enforcement developments in this area, organizations should not wait until the certifications are finalized to begin this work.

Footnotes

[1]

See United States v. Vargas-Cordon, 733 F.3d 366, 382 (2d Cir. 2013) (also requiring a showing that the conduct was intended "to facilitate an alien's remaining in the United States illegally"); *DelRio-Mocci v. Connolly Props., Inc.*, 672 F.3d 241, 246 (3d Cir. 2012) (articulating same standard as *Vargas-Cordon*); *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 91 F.4th 270, 277 (4th Cir. 2024) ("[T]he statute only applies to those who intend in some way to aid an undocumented immigrant in hiding from the authorities."), *cert. denied*, 145 S. Ct. 172 (2024); *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 529 (5th Cir. 2013) ("[W]e have interpreted [Section 1324's] statutory phrase 'harbor, shield, or conceal' to imply that 'something is being hidden from detection.'" (quoting *United States v. Varkonyi*, 645 F.2d 453, 459 (5th Cir. 1981))); *United States v. Dominguez*, 661 F.3d 1051, 1063 (11th Cir. 2011) (vacating harboring conviction because the evidence was insufficient to "support the conclusion that [defendant] substantially facilitated [undocumented individual's] escaping detection from immigration officials").

[2] *United States v. Hansen*, 599 U.S. 762, 771 (2023).

[3] *See* the warrant application, available at https://storage.courtlistener.com/recap/gov.uscourts.nysd.639187/gov.uscourts.nysd.639187.49.0_1.pdf.

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