



The Colorado Health Foundation™

March 26, 2026

Edward Forst
Administrator
Technology Transformation Services
General Services Administration
1800 F Street NW
Washington, DC 20405

Submitted electronically via Regulations.gov

RE: Comments on Information Collection 3090-0290, System for Award Management Registration Requirements for Financial Assistance Recipients

Dear Administrator Forst,

Thank you for the opportunity to provide comments in response to the General Services Administration's (GSA) proposed revisions to the System for Award Management (SAM) registration requirements for financial assistance recipients. The Colorado Health Foundation is a statewide, nonprofit and nonpartisan philanthropic organization with a mission to improve the health and wellbeing of Coloradans. Through community engagement, research, grantmaking, and private sector investments, the Foundation aims to ensure that everyone in Colorado has what they need to be healthy.

We write to express our strong opposition to the proposed changes, which would introduce new certification requirements related to diversity, equity, and inclusion (DEI), immigration, and terrorism. As outlined below, the Foundation is concerned that the proposed revisions:

- Exceed statutory authority and impose conditions on federal funding not authorized by Congress;
- Introduce vague, inconsistent, and legally ambiguous certification requirements;
- Expose nonprofit organizations and other applicants to significant legal and financial risk, including potential liability under the False Claims Act;
- Create a chilling effect that may discourage well qualified organizations from seeking federal funding; and
- Ultimately undermine the effectiveness of federally funded programs and harm the communities they are intended to serve, including across Colorado.

Nonprofit organizations are essential to the health, stability, and well-being of communities and are often the first line of response when people need support. They deliver critical services including health care

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navigation, behavioral health care, food assistance, housing support, and disaster recovery, particularly in rural and historically under-resourced communities where they are often the primary providers of these services.

What the Proposal Does

The proposed revisions would require all applicants and recipients of federal financial assistance to certify compliance with new provisions related to DEI, immigration, and terrorism as part of their SAM registration. These certifications would be made under penalty of civil and criminal law and would be tied to potential liability under the False Claims Act.

Among the proposed additions, item (6) would require entities to affirmatively certify compliance with the U.S. Constitution, federal anti-discrimination laws, and relevant executive orders, while asserting that certain DEI-related practices “may” violate federal law. The proposal provides a non-exhaustive list of examples of such practices, while also incorporating undefined or inconsistently used terms. Additional certifications related to immigration and terrorism similarly require broad attestations without clearly defining key terms or establishing the scope of prohibited activities.

Legal Authority

The Foundation is concerned that the proposed changes exceed the authority of the executive branch and are inconsistent with governing law¹. Conditions on federal financial assistance must be both clearly defined and authorized by Congress. The SAM registration process is intended to support transparency, accountability, and eligibility verification, not to impose new, substantive policy conditions across all federal assistance programs. By embedding these certifications into SAM, the proposal effectively creates across-the-board funding conditions that have not been enacted through legislation. This raises significant legal concerns, particularly where the certifications attempt to operationalize executive orders and agency guidance in ways that extend beyond statutory requirements or conflict with established interpretations of federal law.

The proposed DEI certification, for example, relies on a non-exhaustive list of practices that “may” violate federal law, creating ambiguity rather than clarity. Federal anti-discrimination law, particularly under Titles VI and VII of the Civil Rights Act, has long been interpreted through statute, regulation, and case law.^{2,3} Attempting to redefine or expand these standards through a certification process introduces legal uncertainty and risks inconsistent application.

¹ <https://www.congress.gov/crs-product/LSB11410?s=1&r=7>

² <https://www.dol.gov/agencies/oasam/regulatory/statutes/title-vi-civil-rights-act-of-1964>

³ <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/title-vii-civil-rights-act-of-1964>



Additionally, the certification language reflects internal inconsistencies. While referencing Title VII, the proposed provision focuses primarily on race and color, omitting other protected classes such as sex, religion, and national origin. The interchangeable use of terms such as “race,” “color,” and “ethnicity” creates further ambiguity, despite these categories being treated as distinct under federal law and longstanding legal precedent. The proposal also appears to extend the applicability of executive orders beyond federal agencies to all funding recipients, raising additional legal concerns. Executive orders generally govern the operations of the executive branch of federal government and do not automatically impose binding obligations on external entities absent statutory authority.

Compliance Challenges

The proposed certifications are vague, complex, and in several cases internally inconsistent, making it difficult for applicants to determine what compliance requires. For example, the DEI certification references “relevant executive orders” without specifying which orders apply, while simultaneously asserting that certain DEI practices may be unlawful without providing definitive standards. Organizations are left to interpret broad and conflicting guidance, increasing the risk of inadvertent noncompliance.

Similarly, the immigration-related certification includes terms such as “harbor,” “shield,” and “induce,” which are not defined in this context and may be interpreted inconsistently. Many nonprofits engage in lawful activities such as providing legal services, humanitarian assistance, and emergency shelter to immigrants. Without clear guidance, organizations may be uncertain whether these activities could be construed as violations.

Additionally, the proposed anti-terrorism certification raises additional concerns due to its breadth and lack of clear definition. Recipients would be required to certify that they do not “fund, subsidize, or facilitate terrorism or other illegal activities that threaten public safety or national security,” without clarification of what specific activities fall within this scope.

In the absence of clear definitions, applicants may look to executive branch statements and guidance to interpret these terms. Recent federal memoranda have described “domestic terrorism” in ways that could encompass a broad range of activities, including protest-related conduct or advocacy positions.⁴ This creates uncertainty regarding whether constitutionally protected and lawful activities, such as supporting community organizing, engaging in policy advocacy, or allowing employees to participate in free speech, could be scrutinized under this certification. This ambiguity raises serious concerns about potential chilling effects on lawful expression and association, as well as the risk of inconsistent, arbitrary, or capricious enforcement.

⁴ <https://www.whitehouse.gov/presidential-actions/2025/09/countering-domestic-terrorism-and-organized-political-violence/>



Administrative Burden and Legal Risk

The proposed certifications would impose significant administrative and legal burdens on nonprofits, state and local governments, and Tribal entities. Organizations would likely need to invest substantial time and financial resources in legal consultation simply to interpret the conflicting and undefined requirements outlined in this proposal. In Colorado, these burdens are particularly significant. Many nonprofit organizations operate with limited administrative capacity while serving geographically dispersed communities. Smaller and rural organizations often lack access to legal expertise and may be disproportionately impacted by complex and ambiguous federal requirements.

The requirement to certify compliance under penalty of civil and criminal law, combined with potential False Claims Act liability, creates a heightened risk environment. Even organizations acting in good faith may face audits, investigations, or litigation based on differing interpretations of unclear standards. The Foundation strongly believes this risk has practical implications for whether organizations are willing to participate in federal programs to deliver needed services to communities across the country.

Impact on Nonprofits and Community-Based Organizations

Nonprofit organizations are essential to the health, stability, and well-being of communities across Colorado. They provide critical services including health care navigation, food assistance, housing support, and behavioral health care, often stepping in where public systems cannot meet community needs. At the same time, nonprofits face growing demand for services alongside increasing financial and administrative constraints. Existing public funding systems already present barriers, including complex applications, inconsistent requirements, burdensome reporting, and reimbursement-based payment models that strain organizational capacity.

The proposed SAM certifications would add a significant new layer of administrative burden and risk to this system. These challenges are especially pronounced for small organizations with deep community ties, as well as those serving rural communities and communities of color that have historically faced underinvestment. Rather than improving access or accountability, the proposal risks further limiting equitable distribution of federal funding and reducing the number of organizations able to effectively serve their communities. The cumulative effect of legal ambiguity, administrative burden, and potential liability is likely to discourage participation in federal funding opportunities.

In Colorado, nonprofit organizations, local governments, and Tribal entities are critical partners in delivering federally funded programs that address community needs. If these entities determine that the risks associated with certification outweigh the benefits of funding, they may choose not to apply. This chilling effect would have direct consequences for communities. It could result in fewer organizations delivering services such as housing assistance, food access, health care navigation, and disaster recovery. Rural communities and historically under-resourced communities would be particularly impacted, as they



already face limited access to services.⁵ When trusted, mission-driven organizations withdraw from federal programs, federal resources may go underutilized or be less effectively deployed to where they can have the greatest impact. Ultimately, this undermines the purpose of federal financial assistance programs.

Access to federal funding is a critical component of the systems that support economic opportunity, health, and well-being. Strong nonprofit organizations are essential to maintaining Colorado's health and economic vitality. Policies that make it more difficult for these organizations to access funding weaken communities at a time when demand for services is increasing. The proposed changes risk shifting focus away from service delivery and toward administration, compliance, and risk management. Over time, this may reduce both the number and diversity of organizations participating in federal programs, with downstream effects on access to care, economic stability, and community well-being.

Requests to GSA

In light of these concerns, the Foundation respectfully urges GSA to:

- Withdraw the proposed revisions to the SAM registration requirements related to DEI, immigration, and terrorism certifications;
- Refrain from using the SAM registration process to impose new substantive conditions on federal financial assistance absent clear Congressional authorization;
- Ensure that any future certification requirements are clearly defined, consistent with statutory and constitutional limits, and administratively feasible for applicants; and
- Engage those impacted, including nonprofits, state and local governments, and Tribal entities, to assess the real-world impacts of any proposed changes on access to federal funding

Conclusion

In closing, the Foundation emphasizes that the System for Award Management plays a critical role in enabling access to federal funding. Changes to this system should reduce barriers, not introduce new sources of legal uncertainty and administrative burden. The proposed certifications risk limiting participation by qualified organizations, reducing the effectiveness of federal programs, and ultimately harming the communities those programs are intended to serve. In Colorado and across the nation, ensuring that federal resources reach communities efficiently and equitably must remain a central priority.

⁵ https://coloradohealth.org/sites/default/files/2024-12/Report_StateOfProcurementAndGrantmaking_2024.pdf



We appreciate the opportunity to provide comments and welcome continued engagement on policies that support strong partnerships between the federal government and community-based organizations. If you have any questions, please contact Kyle Rojas Legleiter, The Colorado Health Foundation Senior Director of Policy, at klegleiter@coloradohealth.org or (303) 953-3618.

Sincerely,



Kyle Rojas Legleiter
Senior Director of Policy
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