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1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

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Submitted via Regulations.gov

Elizabeth F. DelNegro
Associate Chief Information Officer
Technology Transformation Services
General Services Administration
1800 F St., NW
Washington, DC 20405

RE: 3090-0290; System for Award Management Registration Requirements for Financial Assistance Recipients

Dear Ms. DelNegro:

On behalf of the National Education Association's (NEA) membership of over 3 million educators, we submit the following response to the General Services Administration (GSA)'s January 28, 2026, notice of proposed revisions to an existing information collection. The notice requests comments on GSA's proposed updates to registration requirements for federal financial assistance recipients in the System for Award Management (SAM).

This comment highlights several of the proposed certifications' many infirmities: they may conflict with court orders halting prior vague and discriminatory attacks on measures branded as "illegal" DEI because they are unclear and may intrude improperly on academic speech and content; they are contrary to best practices for increasing achievement and equal opportunity in educational institutions; and they contain unrelated but similarly vague and ill-conceived attestations about "harboring" undocumented immigrants and "illegal activities" that may stifle vital, lawful efforts to support children and families across the nation. Moreover, these legally dubious certifications are needlessly duplicative of existing certifications and obligations, difficult to parse, and burdensome on funding recipients and their communities, in contravention of the Paperwork Reduction Act (PRA).[1]

[1] *See* 44 U.S.C. § 3506(c)(3).

I. The Proposed Certifications for SAM Registrants Will Broadly Impact Educational Institutions and the Educators Who Support Them

The proposed certifications for SAM registrants may affect NEA's members when the educational institutions they work for seek federal dollars to support their activities. SAM is an electronic system that compiles information about federal financial assistance listings (and contract opportunities) across a variety of fields, including education.[2] Applicants must register on SAM in order to apply for and receive awards.[3] For example, a community college that wishes to apply for competitive grant funding through the Department of Education's Talent Search Program, which facilitates the entry of disadvantaged students into post-secondary education, would need to register in SAM; so, too, would a local education agency that seeks to participate in the Small, Rural School Achievement Program that targets improving student achievement in rural districts. Although states are the direct recipients of some important forms of federal financial assistance under the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act, for example, certain federal regulations require recipients to ensure that their subgrantees—*i.e.*, school districts—comply with award conditions, as well.[4]

The certifications that GSA seeks to impose on federal assistance recipients like the educational institutions where NEA members work are vague, needless, and intrusive. The stated aim of the proposed certifications is to "align with updated executive branch guidance," including the Department of Justice's July 29, 2025 Memorandum, "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," and Executive Order 14173 of January 21, 2025, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."[5] Nevertheless, those documents (which do not have force of law) are not expressly incorporated into GSA's proposed certifications, which appear in a draft of the revised registration requirements.[6]

The proposed certifications would require SAM registrants to affirm compliance 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," citing Titles IV and VII of the Civil Rights Act of 1964 and the Fourteenth Amendment's Equal Protection Clause.[7] They go on to proclaim broadly that federal 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 that recipients "must ensure that their programs and activities comply with federal law and do not discriminate on the basis of race or color."[8] The key terms "DEI," DEIA," "programs," "initiatives," and "activities" are not defined.

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[2] *See* 2 C.F.R. Ch. I, Pt. 25, Subpt. A; *About This Site*, SAM.gov, https://sam.gov/about/this-site (last visited March 17, 2026).
[3] *See generally* 2 C.F.R. Ch. I, Pt. 25, Subpt. A-B.
[4] *See* 34 C.F.R. § 75.708.
[5] 91 Fed. Reg. 3726 (proposed Jan. 28, 2026).
[6] Justification Part A Supporting Statement (Feb. 18, 2026).
[7] *Id.* at 8.
[8] *Ibid.*

The proposed certifications then provide a list of "[e]xamples of practices that may violate applicable Federal anti-discrimination laws": (i) race-based preferences in scholarships, hiring, promotions, and access to resources and facilities, including "through the use of 'cultural competence' requirements, 'overcoming obstacles' narratives, or 'diversity statements'"; (ii) race-based segregation in training sessions, facilities, resources, or "implicit segregation through program eligibility"; (iii) other "unlawful" use of "race-based" selection criteria in contracting, hiring, and resource allocation; (iv) "training programs that stereotype, exclude, or single out individuals based on protected characteristics or create a hostile environment"; and (v) retaliation.[9] The list does not indicate whether all of the practices identified fall within the umbrella of DEI, whether the list is exhaustive, or whether there are DEI-related practices that are *not* discriminatory.

Two more seemingly unrelated proposed certifications follow. One requires registrants to certify that they "[w]ill 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."[10] The other requires registrants to represent that they "[w]ill not fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security."[11]

Other existing certifications continue after these provisions, including commitments to comply with Titles VI and VII—rendering the new certifications purporting to effectuate the same statutes entirely superfluous. A newly inserted statement follows, asserting that "[t]o the extent that any 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 deemed inapplicable to that recipient."[12] Confusingly, the pages of the document are not numbered, and this limitation does not appear on the same page as the amended certifications quoted above.

The document concludes by requiring signers to attest to the certifications' accuracy and subjecting them to serious consequences for misrepresentations or falsehoods: criminal prosecution under 18 U.S.C. § 1001 (which can be punished by a fine or imprisonment) or civil liability under the False Claims Act (under which a defendant may be liable for treble damages)[13]—repercussions that might chill recipients' engagement in any conduct that approaches the broad categories of supposedly unlawful conduct listed in the certifications.

II. The Proposed Certifications May Conflict with Court Orders and Terms of Dismissal in Prior Litigation Over Attacks on "DEI" in Educational Institutions.

The proposed certifications raise serious legal concerns similar to those presented in the Department of Education's February 14, 2025, Dear Colleague Letter to educational institutions, which three

[9] *Id.* at 8-9.
[10] *Id.* at 9.
[11] *Ibid*.
[12] *Id.* at 10.
[13] *See* 18 U.S.C. 1001(a); 31 U.S.C. 3729(a)(1)(G).

federal courts found likely unlawful in whole or in part, and one court permanently vacated.[14] Those orders halted the Department's attempt to stifle efforts in schools, colleges and universities to advance educational opportunity for all students through inclusive curricula and DEI practices.

a. The Dear Colleague Letter Litigation.

The Dear Colleague Letter set forth the Education Department's new, novel, and expansive position on the meaning of the Supreme Court's decision about race-conscious college admissions under Title VI and the Equal Protection Clause, *Students for Fair Admissions v. Harvard*,[15] and its application to a range of activities in educational settings. The Letter prohibited entities covered by Title VI from "using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies and all other aspects of student, academic, and campus life"—including through unspoken "cues" about a student's race like personal essays and extracurriculars. The Letter also asserted that "DEI programs" are discriminatory because they "frequently preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not," thereby "stigmatiz[ing] students who belong to particular racial groups on crude racial stereotypes."

Similar to GSA's proposal here, the Department's subsequent April 3 Request for Certification required funding recipients (often, state education agencies) to certify compliance with the Department's view of Title VI and the Equal Protection Clause—and to rapidly obtain certifications from all local education agencies. As here, the Certification construed Title VI to prohibit "the use of [DEI] programs to advantage one's race over another" and asserted that the "use of certain DEI practices can violate federal law." Similarly, the Certification came with a threat to punish noncompliance with treble damages under the False Claims Act.

NEA, the American Federation of Teachers (AFT), and the National Association for the Advancement of Colored People (NAACP) each (along with other plaintiffs) filed lawsuits challenging the Letter and implementing documents—a Frequently Asked Questions document, an "End DEI" reporting portal, and the Certification—as unlawful intrusions into educators and students' rights, and into educational programming, in violation of the First Amendment, the due process clause of the Fifth Amendment, and the Administrative Procedure Act (APA). The three lawsuits, filed respectively in the U.S. District Courts for New Hampshire, Maryland, and the District of Columbia, resulted in preliminary rulings in April 2025 that wholly or partly granted the requested injunctive relief.

The New Hampshire court preliminarily enjoined the Letter and implementing materials as to NEA, its co-plaintiffs, and their members.[16] The court reasoned that the Department's "ban on DEI" likely violated educators' Fifth Amendment rights on vagueness grounds and their First Amendment right to academic freedom in the higher education context, and violated the APA (because the Letter was

[14] Memorandum Opinion, *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025).
[15] 600 U.S. 181 (2023).
[16] Order, *National Education Association v. United States Dep't of Education*, No. 25-cv-091 (D.N.H. April 24, 2025), at 81.

contrary to constitutional rights, in excess of statutory jurisdiction in reaching school curriculum, contrary to law, and in violation of the notice-and-comment requirement).[17] The court in Maryland stayed the Letter's implementation nationwide, holding that those plaintiffs were likely to succeed on their similar claims under the APA,[18] while the District of Columbia court enjoined the Certification requirement, holding that its prohibition on DEI was likely unconstitutionally vague.[19]

The Maryland court later fully vacated the Letter and Certification requirement, concluding that the Department had violated the APA and educators' constitutional rights.[20] Relevant here, the court concluded that the Letter and Certification violated the APA because they were arbitrary and capricious: they unjustifiably adopted a view of *Students for Fair Admission* that deviated from past positions and existing precedent (calling into question the acceptability of meetings or course materials focused on race, and condemning race-neutral means of enhancing diversity), lacked factual grounding for their assertions (such as the Letter's claim that schools had "toxically indoctrinated" students about systemic racism), and failed to consider educators' and school districts' reliance on past positions.[21] The court also held that the Letter violated the APA as contrary to law to the extent it reached classroom speech by condemning certain teaching about race (or supposedly "stigmatizing" or "indoctrinating" students), because the Department of Education Organization Act (DEOA) prohibits the Department from regulating curricular content.[22]

The Maryland court held that the Letter and Certification violated plaintiffs' constitutional rights (and the APA) because the Letter constituted "textbook viewpoint discrimination" in violation of the First Amendment based on its identification of "systemic and structural racism" and "teach[ing] about moral burdens" relating to racism as discrimination that could give rise to enforcement actions.[23] In addition, the court held that the Letter and Certification were unconstitutionally vague because they prohibited "DEI practices" without clearly defining what they were.[24]

The Department noticed but then voluntarily dismissed an appeal, leaving the Maryland order in place.[25] Soon after this dismissal, NEA, its co-plaintiffs, and the Department jointly sought dismissal of the New Hampshire action, which the court granted.[26] They stipulated, in relevant part, that the challenged agency actions had been vacated, that the Department would not rely on them in its enforcement actions, and that the April 3 Certification "will not be reinstated in substance even if

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[17] *Id.* at 45-74.
[18] Memorandum Opinion, *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. April 24, 2025), at 26-43, 46-47.
[19] Oral Ruling, *NAACP v. U.S. Dep't of Education*, No. 1:25-cv-01120 (D.D.C. April 24, 2025), at 13-15.
[20] Memorandum Opinion, *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025), at 40-69.
[21] *Id.* at 40-51.
[22] *Id.* at 51-55 (citing 20 U.S.C. § 3403(b)).
[23] *Id.* at 56.
[24] *Id.* at 63-68.
[25] Order, *American Federation of Teachers v. U.S. Department of Education*, No. 25-2228 (4th Cir. Jan 22, 2026).
[26] Joint Motion to Dismiss the Complaint, *National Education Association v. United States Dep't of Education*, No. 25-cv-091 (D.N.H. Feb. 3, 2026).

under another name."[27] The District of Columbia challenge was closed in essentially the same fashion.[28]

b. The Proposed SAM Certifications Repeat the Legal Errors That Courts Identified in the Dear Colleague Letter Litigation.

The proposed certifications resemble the agency actions vacated in the Dear Colleague Letter litigation in at least two respects: their express targeting of ill-defined DEI "programs" (or "practices," "activities," or "initiatives"), and their potential for infringing academic freedom by restricting certain viewpoints.

All three of the courts discussed above held that either the Dear Colleague Letter, the April 3 Certification, or both, were unconstitutionally vague in their attempts to prohibit educational institutions from implementing DEI "programs" or "practices." The courts acknowledged the capaciousness of the term "DEI" and the Department's failure to clearly identify when it is unlawful—even though the Letter and an accompanying FAQ document provided some gloss on whether and how those terms applied. The proposed certifications here, too, point generally to the possible illegality of DEI "programs or initiatives," "activities," or "practices," without definition or legal support. Although the proposed certifications' enumerated examples of possibly discriminatory practices provide some clarity, the list does not definitively state which practices are or are not discriminatory or how this relates to DEI—beyond claiming that programs "labeled" as DEI may be discriminatory.

Further, as was the case with the FAQs accompanying the Dear Colleague Letter, some of the examples in the proposed certifications create more confusion than clarity, such as: their unspecified linkage of race-based discrimination and "'cultural competence' requirements, 'overcoming obstacles' narratives, and 'diversity statements'"; their inscrutable reference to "implicit segregation through program eligibility"; and their open-ended prohibition on "[t]raining programs that stereotype, exclude, or single out individuals based on protected characteristics or create a hostile environment," potentially encompassing any form of bullying behavior, race-based or otherwise.

Just as the plaintiffs successfully argued in the various Dear Colleague Letter challenges, GSA's proposal here leaves educational institutions without adequate guidance as to when efforts to build and meet the needs of their students and staff (whether labeled "DEI" or not) might run afoul of the certifications—and at risk of grave penalties if they do. Moreover, the certifications are ripe for subjective interpretation and inconsistent or even selective enforcement. The certifications would be yet another hook for the Department of Education, for example, to use in its crusade against disfavored educational institutions that promote diversity and inclusion—one that has continued even after its losses in the Dear Colleague Letter litigation.[29] Further, although the proposed certifications do not specifically reference teaching or particular views on systemic racism, as the Dear Colleague

[27] Joint Motion at 2.
[28] Joint Motion to Dismiss the Complaint, *NAACP v. U.S. Dep't of Education*, No. 1:25-cv-01120 (D.D.C. Feb. 6, 2026), at 2.
[29] U.S. Department of Education, U.S. Department of Education's Office for Civil Rights Initiates Title VI Investigation into Portland Public Schools (Feb. 17, 2026)..

Letter did, they strongly suggest that DEI "programs or initiatives" are unlawful "discriminatory practices." This certification could be interpreted as prohibiting any sort of programming that is supportive of DEI, potentially chilling the exercise of First Amendment rights in the classroom on the basis of viewpoint, absent any protective limitations.

Even assuming that the proposed certifications do not run headlong into the Maryland order and the stipulated terms of the dismissals in New Hampshire and District of Columbia, they might well be struck down under the same kinds of reasoning. As discussed above, the certifications are susceptible to challenges under the Fifth and First Amendments: they are vague as to what forms of DEI-related programs or practices they prohibit, susceptible to arbitrary enforcement, and likely to have a chilling effort on both educational institutions' regular activities and on the exercise of academic freedom in higher education.

The proposed certifications may be invalidated under the APA as well. As an initial matter, these new, substantive conditions on the receipt of federal financial assistance arguably are legislative rules that should have been promulgated through a rulemaking, not simply through a proposed information collection under the Paperwork Reduction Act.[30] GSA's approach to creating new conditions on funding without Congressional authorization may present Spending Clause problems, too.[31] Further, the conditions may violate the APA for reasons similar to those that doomed the Dear Colleague Letter: the conditions may violate constitutional rights, exceed statutory limits on agency authority (potentially serving as a back door for the Department of Education to intrude upon curricular choice), and they are arbitrary and capricious. The proposed certifications here, then, also may well be struck down.

c. The Proposed Certifications May Prohibit or Discourage the Use of Beneficial Programs and Curricula That Advance Equal Opportunity and Supportive Environments at Educational Institutions.

In addition to being legally dubious, inclusion of the proposed certification requirements also may stifle lawful programs and practices that promote equal opportunity, advance academic achievement, and support all students and staff in K–12 schools and colleges, whether termed "DEI" or not.

Promoting a diverse student body is beneficial to all students—and can be achieved through a variety of lawful measures—despite the proposed certifications' presumption to the contrary.[32] Studies have shown that exposure to diversity in the classroom improves both K–12 and higher education

[30] *See, e.g.*, *Chisholm v. Collins*, 38 Vet. App. 140, 148 & n.4 (Ct. Vet. Claims 2025); *Billings v. TSA*, 153 F.4th 46, 51-52 (D.C. Cir. 2025).
[31] *See, e.g.*, *West Virginia v. U.S. Department of the Treasury*, 59 F.4th 1124, 1147-1148 (11th Cir. 2023).
[32] Although GSA has not offered express justifications for the proposed certifications (beyond generally seeking to align with other guidance documents), they appear to draw on the current Administration's expansive and novel interpretation of *Students for Fair Admission*. But that decision was specifically about race-conscious college admissions when tied to the aim of achieving the educational benefits of diversity. It did not address, much less condemn, the extremely broad range of practices to which the Administration apparently wishes to apply it—from race-neutral admissions practices, to addressing systemic racism in the classroom, to practices that have nothing whatsoever to do with educational opportunity.

students' cognitive skills, such as critical thinking and problem solving.[33] In addition, contact among students of different racial backgrounds can combat stereotypes and prejudice, and can make students more comfortable relating to others, better preparing them for interacting with clients, customers, and colleagues in the workplace.[34] This also prepares students for citizenship in a diverse society.[35] Programs that support the recruitment and persistence of students from underrepresented groups also have been proven to contribute to expanding participation in crucial fields like STEM.[36]

Fostering and supporting diversity within the faculty and staff of educational institutions is another valuable practice that the proposed certifications may needlessly hinder. Indeed, diversity among professionals and academics leads to more creativity and innovation,[37] and enables a field to take advantage of a broader talent pool.[38] The benefits of a diverse teaching body include the capacity to lead for social justice through local and global civic engagement, as well as the development of an

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[33] Century Foundation, *The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms* 1–2 (Apr. 29, 2019); Amy Stuart Wells, et al., *How Racially Diverse Schools and Classrooms Can Benefit All Students*, The Century Foundation 14, 18 (Feb. 2016); Katherine W. Phillips, *How Diversity Works*, 311 SCI. AM. 42, 44–46 (Oct. 2014); Roslyn Arlin Mickelson & Martha Bottia, *Integrated Education and Mathematics Outcomes: A Synthesis of Social Science Research*, 88 N.C. L. REV. 993, 998 (2010); Geoffrey Borman & Maritza Dowling, *Schools and Inequality: A Multilevel Analysis of Coleman's Equality of Educational Opportunity Data*, 112 TEACHERS COLL. REC. 1201, 1236– 39 (2010); Bernadette Gray-Little & Robert A. Carels, *The Effect of Racial Dissonance on Academic Self-Esteem and Achievement in Elementary, Junior High, and High School Students*, 7 J. RES. ON ADOLESCENCE 109, 123, 125–26 (2010); James Benson & Geoffrey Borman, *Family, Neighborhood, and School Settings Across Seasons: When Do Socioeconomic Context and Racial Composition Matter for the Reading Achievement Growth of Young Children?*, 112 TEACHERS COLL. REC. 1338, 1371, 1374–75 (2010); Mary J. Fischer & Douglas S. Massey, *The Effects of Affirmative Action in Higher Education*, 36 SOC. SCI. RESEARCH 531, 544 (2007).

[34] Leane Salazar Montoya, *Equity, Diversity and Inclusion: What's in a Name?,* 22 SEATTLE J. FOR SOCIAL JUSTICE 621, 630 (2024); Elise Cappella et al., *The Hidden Role of Teachers: Child and Classroom Predictors of Change in Interracial Friendships*, 37 J. EARLY ADOLESCENCE 1093, 1111 (2017); Elizabeth Stearns, *Long-Term Correlates of High School Racial Composition: Perpetuation Theory Reexamined*, 112 TEACHERS COLL. REC. 1654, 1670–74 (2010); Cynthia Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEO. L. J. 1, 19, 23–24 (2000).

[35] Patricia Gurin et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOC. ISSUES 17, 28 (2004).

[36] Mica Estrada, et al., *Improving Underrepresented Minority Student Persistence in STEM*, 15 CBE Life Sci. Educ. (2017); Kenneth Maton, et al., *Outcomes and Processes in the Meyerhoff Scholars Program: STEM PHD Completion, Sense of Community, Perceived Program Benefit, Science Identity, and Research Self-Efficacy*, 15 CBE Life Sci. Educ. (2017); John T. Matsui, *"Outsiders at the Table"—Diversity Lessons from the Biology Scholars Program at the University of California, Berkeley*, 17 CBE Life Sci. Educ. (2018); Zakiya S. Wilson, et al., *Hierarchical Mentoring: a Transformative Strategy for Improving Diversity and Retention in Undergraduate STEM Disciplines*, 21 J. Sci. Educ. Technol. 148 (2012).

[37] National Institutes of Health, Notice of NIH's Interest in Diversity (2019); Talia H. Swartz, et al., *The Science and Value of Diversity: Closing the Gaps in Our Understanding of Inclusion and Diversity*, 220 THE JOURNAL OF INFECTIOUS DISEASES S33 (2019).

[38] James A. Olzman, *Diversity Through Equity and Inclusion: The Responsibility Belongs to All of Us*, 31 MOLECULAR BIOLOGY OF THE CELL 2749 (2020).

inclusive school culture and culturally relevant pedagogy; diverse educators can also serve as both cultural translators and role models.[39]

Diversity among educators also supports student achievement.[40] For example, having a Black teacher is associated with higher test scores (and social and emotional gains) for Black elementary school students, and emerging findings show that the same holds true for Latino teachers and students.[41] The presence of a Black teacher within a school's grade-level teaching team is associated with improved test scores for Black students even when those students are assigned to a White teacher.[42] And, like exposure to diverse classmates, exposure to diverse educators also develops culturally proficient students "who are equipped to promote cross-cultural consciousness and equitable social change."[43] A lack of exposure, on the other hand, can lead students to a propensity for heightened stereotypical behavior.[44] To reap the benefits of diversity among faculty and staff, however, schools may need to employ targeted and responsive measures to address barriers to the recruitment, and, importantly, retention, of educators of color.[45]

Further, the proposed certifications may dissuade schools and educators from adopting instructional approaches that promote and support diversity, which also can advance equal educational opportunity and attainment for all students. Research has established that a culturally responsive and racially inclusive curriculum benefits all students and offers the most effective pedagogical approach.[46] Indeed, widely implemented equity-based practices are simply good instruction, regardless of whether they are labeled "DEI."[47] Further, culturally responsive education can enhance "students' critical thinking . . . reasoning, inference-making, and analytical skills," and is associated with "increased standardized test scores," "improved math, science, and reading achievement," "higher GPAs," "higher attendance rates," and higher graduation rates.[48] Additionally, like a diverse student body, such approaches prepare students to thrive in our multiracial democracy, preparing them as citizens and voters who are able to critically engage with the world and make their place within it.[49]

Deterring lawful programs and instructional approaches that seek to promote goals like diversity, equity and inclusion also inhibit academic freedom and the exercise of First Amendment rights by students, faculty and staff. Schools and universities must be forums where free and open debates

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[39] Carlos Nevarez, *Benefits of Teacher Diversity: Leading for Transformative Change*, 4 J. OF SCH. ADMIN. RESEARCH & DEV. 24 (2019); Desiree Carver-Thomas, et al., *Supporting and sustaining a diverse teacher workforce*, Learning Policy Institute (2025).

[41] Carver-Thomas, at 3.
[42] *Ibid.*
[43] *Id*. at 30.
[44] Hua Yu Sebastian Cherng & Peter F. Halpin, *The Importance of Minority Teachers: Student Perceptions of Minority Versus White Teachers*, 45 EDUCATIONAL RESEARCHER 407 (2016).
[45] Carver-Thomas, at 46-53.
[46] See National Education Association and Law Firm Antiracism Alliance, *The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Culturally Responsive and Racially Inclusive Public Education for All Students* (2022), at 6-11.
[47] Joshua P. Starr, *How Education Leaders Should Respond to the Anti-DEI Crowd*, Education Week (March 27, 2025).
[48] *Id.* at 7 (citing studies).
[49] *Id.* at 15.

about pressing issues are encouraged, not silenced or chilled by fears of government retaliation. Indeed, efforts to the contrary, like this one, may force educators out of the classroom; at least one study has shown that state-level restrictions on "honest teaching and conversations" is a reason that many K–12 educators have considered leaving the profession in recent years.[50] As institutions whose very mission is education, schools and colleges must set an example, by their words and actions, that decisions about curriculum and instruction are off limits from federal interference and censorship efforts.

III. The Proposed Certifications About Harboring Undocumented Immigrants and Illegal Activities Are Vague and May Stifle Vital and Lawful Activities at Educational Institutions.

NEA is also seriously troubled by the proposed certifications related to undocumented immigrants and terrorism. These proposed certification provisions are vague, needless, and could expose educational institutions to government retaliation—potentially putting educators at risk and inhibiting the delivery of important services to school communities.

a. The Harboring Certification.

The proposed certification relating to harboring undocumented immigrants is both an ill-fitting non-sequitur and troublingly broad. It states that recipients "[w]ill 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."

As an initial matter, this certification bears no relation to the stated goal of GSA's amendments to the SAM registration requirements: to "align with updated executive branch guidance" contained in an executive order and a Department of Justice memorandum, both of which focus on ending DEI.[51] Neither of these directives discusses a problem of federal funding recipients engaging in alien harboring, or even references immigration. This alone renders the provision highly suspect, as it is untethered to the agency's purpose and lacks any factual support for its necessity.

Beyond this, the provision is both broad and vague, creating uncertainty and burden. Although it cites as its authority 8 U.S.C. § 1324, the language here sweeps more broadly than that criminal statute and appears to have been drawn haphazardly from multiple provisions in Sections 1324 and 1324a. In relevant part, Section 1324(a)(1)(A)(i) makes it a crime to bring a person to the United States outside of a designated port of entry while "knowing that a person is an alien." Section 1324(a)(1)(A)(iii) imposes criminal liability on any person who, **"**knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation." It is Section 1324a

[50] Anna Merod, *Survey: 37% of teachers will likely quit if K-12 censorship laws reach them*, K-12 Dive (Jan. 24, 2022).
[51] 91 Fed. Reg. 3726 (proposed Jan. 28, 2026).

that separately prohibits (generally as a civil violation) hiring a person knowing that they are undocumented.

The proposed certification differs from the anti-harboring provision codified at 8 U.S.C. § 1324 in at least three ways that make the certification's scope more expansive and less ascertainable. First, the certification includes a scienter requirement, "knowingly," but does not clearly indicate to what the knowledge requirement applies—whether it is knowledge of having taken one of the prohibited actions (*i.e.*, harboring, concealing, shielding) or extends to knowledge of the person's undocumented status. The certification's second clause adds a "reckless disregard" standard with respect to the person's status, but this is separated from the first clause by a semi-colon that renders the two provisions' connection unclear. Second, the certification omits the words "from detection," from Section 1324's phrase "conceals, harbors, or shields from detection." That language otherwise ensures that the only unlawful acts of "shielding" under the statute are those that hide an undocumented person, consistent with most circuit courts' conclusion that the statute only reaches acts designed to prevent detection by law enforcement.[52] Third, the certification omits another phrase in Section 1324, "in any place, including any building or any means of transportation," which arguably limits criminality to acts of concealment rather than acts of service or advice.[53]

By not requiring recipients to vouch for compliance with this broadened version of the anti-harboring statutes, the certifications expose educational institutions to great risk and are likely to stamp out important community programming that NEA members support. Indeed, most schools provide basic services, including health care and nutrition, to all students, even students who may be undocumented or whose families may include undocumented members. Some schools may offer additional supports to families that are experiencing food or resource insecurity, including in periods of widespread fear and chaos relating to immigration enforcement activities in the community—a phenomenon that has affected documented and undocumented families alike.[54] Many schools have also adopted policies requiring a judicial warrant before allowing federal law enforcement agents access to private school spaces, such as classrooms or dorm rooms. And others may offer "know your rights" trainings or materials to inform students and community members of their rights when interacting with federal law enforcement agents, including those conducting immigration enforcement activities.

These are all lawful activities as a general matter, but there is good reason to worry that this Administration might construe them as actions that "harbor" or "shield" undocumented immigrants under the broad definitions contained in the proposed certifications here[55]—misrepresentations that could be punished by criminal liability under 8 U.S.C. § 1001 and treble damages under the False

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[52] *See, e.g.*, *United States v. Vargas-Colon*, 733 F.3d 366, 379-382 (2d Cir. 2013); *United States v. Cuevas-Reyes*, 572 F.3d 119, 121-123 (3d Cir. 2009); *Reyes v. Waples Mobile Home Park Limited Partnership*, 91 F. 4th 270, 277 (4th Cir. 2024).

[53] *But see United States v. Cantu*, 557 F.2d 1173, 1180 (5th Cir. 1977) (construing the phrase as "broadly inclusive, not restrictive").

[54] Education International, *ICE Out of Schools! Educators and their Unions Mobilise for Students and Demand that Immigration Enforcement Stop Terrorizing Communities in the United States* (Feb. 18, 2026).

[55] Selen Ozturk, *What Happens if you Help an Undocumented Immigrant? American Community Media* (June 2, 2025).

Claims Act. The Administration has recently demonstrated its willingness to take maximalist positions to stamp out supports for non-citizen students, such as suing states like Illinois and Minnesota for offering in-state tuition to undocumented students.[56] And the Justice Department has also obtained a search warrant for Columbia University on the basis that the university was "harboring" students by declining to provide Immigration and Customs Enforcement (ICE) agents with access to student housing without a judicial warrant—a step the university took lawfully.[57] Taking into account the certification's breadth and the Administration's positions, officials signing the certification may reasonably believe that their organizations must refrain from engaging in lawful activities that protect and assist their students in order to avoid possible government investigations and liability.

As with the proposed certifications regarding DEI, the harboring certification may be susceptible to a vagueness challenge. Considering the disconnect between GSA's stated purpose in amending the certification and the content of this certification, it is likely to violate the PRA and APA, as well, as it is a needless effort that either intentionally or indiscriminately thwarts measures to protect and support entire communities that may contain undocumented individuals.

b. The Illegal Activities Certification.

The proposed certification on illegal activities suffers from many of the same defects as the harboring certification—it bears no relation to GSA's stated purpose and is staggeringly broad and vague, yet subject to grave penalties. The certification requires recipients to aver that they "[w]ill not fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security."

It is particularly unclear which "illegal activities" may be construed to "threaten public safety or national security." The proposal does not include an exhaustive list of which activities would meet this standard. Could such "illegal activities" include unpermitted protests, the placement of a campaign signs that obstructs traffic or roadway signage, a "social" strike to oppose governmental policy during which a school district does not withhold staff wages, or organizing to oppose the actions of government agencies like ICE? The recent propensity of government officials to declare without evidence that individuals and organizations engaged in lawful protest are "domestic terrorists" only increases the reasonable fear that these terms may be construed broadly and subjectively.[58] Further, the Administration has issued multiple memoranda and orders seeking to expand both the definition of domestic terrorism and to expand investigations into groups and organizations that support political views that it disfavors.[59]

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[56] Complaint, *United States v. Illinois*, No. 3:25-cv-1691 (Sept. 2, 2025, S.D. Ill.); Complaint, *United States v. Walz*, No. 0:25-cv-02668 (Jun. 25, 2025, D. Minn.).
[57] Order Unsealing Warrant Application, *Chung v. Trump*, No. 1:25-cv-02412 (S.D.N.Y May 13, 2025).
[58] *See* Jonah E. Bromwich, *White House Use of 'Domestic Terrorist' Doesn't Match Legal Reality*, New York Times (Jan 28. 2026).
[59] *See, e.g.*, The White House, *Designating Antifa as a Domestic Terrorist Organization* (Sept. 22, 2025); National Security Presidential Memorandum-7 (Sept. 25, 2025); Office of the Attorney General, *Implementing National Security Presidential Memorandum-7: countering Domestic Terrorism and Organized Political Violence* (Dec. 4, 2025).

As with the proposed harboring certification, this proposed certification also may be considered impermissibly vague and may compel signers to deter lawful conduct at their institutions, including the exercise of First Amendment rights, in order to avoid time-consuming and expensive investigation into any potential misrepresentations and possible substantial liability.

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For these reasons, NEA urges the removal of the proposed certification requirements related to diversity, equity and inclusion, immigration, and domestic terrorism. NEA respectfully submits these comments for consideration. Please do not hesitate to contact me or Katie Lamm at KLamm@nea.org, should you have any questions.

Sincerely,

Daaiyah Bilal-Threats
Senior Director, Education Policy and Implementation Center
National Education Association