



**THE HERRON  
GROUP LLC**

**THE SIGNAL REPORT**

*Forward-looking intelligence for leaders who want to prepare, not react.*

# **Beyond the Boilerplate**

*What the New SAM.gov Certifications Mean for Federal Grant Recipients*

**The Herron Group, LLC**

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*Navigate Complexities. Engineer Success. Measure Impact.*

## The signal

Every organization that receives federal financial assistance signs a set of certifications when it registers in SAM.gov, and again every year at renewal. For most institutions, this has been routine paperwork. An authorized officer signs, the registration renews, the funding flows. The substance of the certifications has been stable for years.

That is changing. On January 28, 2026, the General Services Administration published a proposed rule that adds three new affirmative certifications to the Financial Assistance General Representations and Certifications. The new attestations cover diversity, equity, inclusion and accessibility (DEIA) practices, immigration enforcement cooperation, and national security. Each one is signed under penalty of civil liability under the False Claims Act and criminal liability under the federal false statements statute.

The 60-day public comment period closed on March 30, 2026. GSA received over 2,300 comments, including a sign-on letter from the National Council of Nonprofits and the NAACP Legal Defense Fund joined by 1,300 other organizations, a separate letter from the Council on Governmental Relations representing 230+ research universities, and opposition from the Grant Professionals Association, the National Women's Law Center, and many others. The rule has not been finalized. It is expected to take effect in the near term.

SAM certifications stopped being boilerplate the day this proposal was published. This brief lays out what changed, who is exposed, where the practical risk lives, and what mission-driven institutions should be doing in the next 60 to 90 days regardless of how the final rule reads.

## What is changing

The proposed rule adds three new affirmative certifications. It also revises one existing certification (related to freedom of speech and religious liberty) and adds the Administrative False Claims Act of 2023 to the list of federal laws with which registrants must comply. The new certifications:

- **Antidiscrimination, with new emphasis on DEI and DEIA programs.** Registrants certify compliance with the Constitution, federal antidiscrimination laws, and "relevant executive orders" prohibiting discrimination on the basis of race or color. The proposal lists specific examples of practices that "may violate" federal antidiscrimination law: race-based scholarships, preferential hiring or promotion based on race or ethnicity, "cultural competence" requirements, "overcoming obstacles" narratives, "diversity statements," race-based training, race-conscious "diverse slate" hiring, and retaliation against employees who oppose practices they believe violate the law.

- **Immigration.** Registrants certify they will not knowingly bring or attempt to bring to the United States, transport, conceal, harbor, shield, hire, or recruit for a fee a person who is in the country unlawfully, or induce a person to enter or reside in the country with reckless disregard of unlawful status. The language tracks 8 U.S.C. 1324, the federal harboring statute.
- **National security.** Registrants certify they will not fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security.

The proposal closes with an "active injunction" carveout: to the extent any specific certification is enjoined by a court order legally binding on both the recipient and the relevant awarding agency, that certification is deemed inapplicable. All others remain in effect. The carveout effectively contemplates litigation.

## Who is exposed

GSA estimates 222,760 entities are currently registered in SAM for financial assistance. The category sweeps in:

- K-12 districts, charter networks, and state education agencies receiving Title I, IDEA, ESSER, school nutrition, and other federal pass-through funds.
- Higher education institutions receiving Title IV student aid, federal research grants, TRIO programs, NSF, NIH, or other federal awards. Affinity scholarships and identity-focused student support are most directly named in the proposal.
- Nonprofits and community-based organizations receiving federal grants for housing, community development, health, education, food, shelter, disaster recovery, workforce, and human services. Both direct recipients and subrecipients are in scope.
- State, local, and tribal governments, public health agencies, workforce boards, and other public sector entities. Pass-through entities also flow the certifications down to subrecipients.
- Faith-affiliated and community organizations operating federally-funded programs (food pantries, shelters, after-school programs, refugee resettlement).

Two implications follow from the breadth. First, the rule sweeps in organizations that think of themselves as "barely federal" because their direct federal funding is small or indirect. Second, even institutions that decide not to pursue new federal awards remain in scope so long as they maintain an active SAM registration to administer existing awards or partnerships.

## Where the practical risk lives

The principal opposition argument across all the major comment letters is the same: the gap between what the proposed certification text says and what the underlying federal law actually requires. The certifications are written more broadly than the statutes they reference, and they incorporate executive orders and agency guidance that, by their own terms, apply to federal agencies rather than to grant recipients directly. That gap is where the practical exposure lives.

- **False Claims Act exposure.** A SAM certification is a representation made to the federal government in connection with the receipt of federal funds. If a registrant signs while operating a program the government later characterizes as falling within the prohibited DEIA framework, the registrant may face FCA liability. Penalties include treble damages plus per-claim statutory penalties, and the Act authorizes private whistleblower (qui tam) actions.
- **Criminal false statements.** Section 1001 of Title 18 makes it a crime to knowingly make a false statement in any matter within federal jurisdiction. Penalties include fines and up to five years in prison. Liability attaches to the authorized officer who signs.
- **Vagueness and selective enforcement.** Comment letters from COGR, the National Women's Law Center, and others raised due process concerns. The proposal does not define "DEIA," does not specify which executive orders are "relevant," and does not define "facilitate," "violence," or "terrorism" in the national security certification. That vagueness creates discretion for selective enforcement against organizations whose public visibility, mission framing, or program names attract attention.
- **Disproportionate practical impact.** The practices specifically named in the antidiscrimination certification (race-based scholarships, cultural competence, overcoming obstacles narratives, diversity statements) are concentrated in programs designed to serve historically marginalized communities. The sector consensus, as reflected in the NCN sign-on letter, is that the harm will fall most heavily on organizations led by and serving Black, Latino, Asian American and Pacific Islander, and Indigenous communities, women, LGBTQ+ people, people with disabilities, and immigrants. That is observed practical impact, not interpretive framing.
- **Consequences of non-registration.** A registrant that does not sign the certifications cannot maintain an active SAM registration. Without an active registration, the entity cannot receive new federal awards and may not be able to draw down on existing awards. For many institutions, that consequence is operational rather than theoretical: federal funds support staff, programs, and core services.

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## Implications for mission-driven institutions

## Higher education

The proposal directly names practices that have been embedded in higher education for two decades: affinity scholarships, identity-based mentor matching, cohort programs targeting first-generation or underrepresented students, race-conscious admissions support structures, and diversity statements in faculty hiring. The post-SFFA admissions environment already constrains some of these structures. The new certification raises the institutional cost of maintaining what remains, while research-intensive institutions also face compliance burdens at the federal grant level. Title IV student aid is in scope alongside research awards.

## K-12 and state education systems

Districts, charter networks, and state agencies that have built equity-named programs, culturally responsive curriculum frameworks, or identity-focused educator pipelines should expect those programs to be reviewed under the new framework. Federal pass-through dollars (Title I, IDEA, ESSER tail funding, school nutrition) are at stake. Charter networks operating under accreditation or authorization frameworks that themselves reference equity language face a layered risk picture.

## Nonprofits and public sector

Nonprofits operating federally-funded programs in housing, food, shelter, workforce development, disaster recovery, and human services are in scope. The immigration certification adds a separate layer for organizations providing services regardless of immigration status, even where those services have been long-recognized as humanitarian. Public health agencies, workforce boards, and tribal governments operating federal programs face similar exposure.

## Faith-affiliated institutions

Many faith-affiliated nonprofits and congregations operate federally-funded programs (refugee resettlement, food assistance, transitional housing, after-school programs). The revised certification language touching freedom of speech and religious liberty intersects with the antidiscrimination certification in ways the proposal does not fully resolve. Faith-affiliated higher education institutions face the same exposure as secular peers on the DEIA elements.

## What organizations should be doing now

Final rule timing is uncertain but the actions below are useful regardless of how the rule reads. They are also useful in their own right as good operational hygiene.

- **Map federal exposure.** Build a single inventory of every federal grant, cooperative agreement, contract, and pass-through dollar the organization touches in the current fiscal year. Note source agency, program name, renewal date, and share of operating

budget. Without this inventory, no decision about compliance, redesign, or funding diversification can be made well.

- **Identify the authorized officer.** Confirm who has signed past SAM certifications and will sign the next renewal. Ensure that person sees the proposed text and understands the False Claims Act and 18 U.S.C. 1001 framework. The signing decision sits with that officer regardless of how the board interprets the program portfolio.
- **Audit program language and design.** Inventory where DEI, DEIA, equity, cultural responsiveness, and similar terms appear in program names, eligibility criteria, training materials, hiring frameworks, and public-facing communications. Separately, identify programs where race or ethnicity is a decision factor in eligibility, selection, or resource allocation. The inventory itself is not a compliance decision; it is a precondition for one.
- **Tighten documentation.** For programs that use any race-based, ethnicity-based, or identity-based criteria, document how decisions are made and the rationale behind the design. The organization that can describe its decision logic in writing will be in a stronger position than the organization that operated on shared understanding alone.
- **Engage counsel early.** Bring the proposed certification text to qualified nonprofit, education, or grants counsel and ask the right question: "based on what we actually do, what is our exposure if our authorized officer signs this at our next renewal." Counsel's answer will shape both program decisions and the financial sustainability conversation.
- **Brief the board.** This is a strategic, financial, and reputational issue, not a quiet operational one. Boards that learn about the rule when an audit notice arrives are in a worse position than boards briefed in advance. The brief does not need to recommend action yet. It needs to ensure shared awareness.

## Questions for boards, counsel, and finance leaders

The questions below have surfaced consistently in conversations with leaders across sectors. They are useful as a structured starting point for a leadership team or board conversation.

- Which programs in our portfolio currently rely on federal financial assistance, directly or via pass-through?
- What share of our operating budget would be exposed if federal funding became unavailable for a sustained period?
- Which of our program names, eligibility criteria, training materials, or hiring frameworks use language this rule treats as suspect?
- For each, can we describe what we actually do in race-neutral terms, or is the race-based criterion central to the program's purpose?

- If we redesign a program, will it still meet the need it was created to serve? What is the cost of redesign, and the cost of not redesigning?
- Who is our authorized officer for SAM, and have they reviewed the proposed text with counsel?
- What is our financial sustainability plan if we conclude one or more federal awards are no longer worth the compliance terms?
- What is our communications posture if a federal investigation, audit, or media inquiry follows?

## What to watch

The rule has not been finalized. Three signals are worth tracking over the next 60 to 90 days:

- **The final rule itself.** GSA may publish substantively the same text as the February 18, 2026 draft, or may narrow it in response to comments. Comments specifically raised the lack of definitions, statutory authority, and conflict with existing executive orders on freedom of speech and religious liberty. The shape of the final text will determine the immediate compliance posture.
- **Litigation.** Several federal courts have already enjoined related agency actions implementing EO 14173. The "active injunction" carveout in the proposal contemplates this. New litigation challenging the SAM certification framework is plausible and may produce a partial injunction that affects how some certifications apply.
- **Parallel federal contractor action.** On March 26, 2026, EO 14398 ("Addressing DEI Discrimination by Federal Contractors") required federal agencies to insert a new clause into all covered contracts and subcontracts by April 25, 2026. The contractor side and the financial assistance side are now moving in parallel. Organizations holding both grants and contracts face layered compliance.

## Sources

Primary government sources, sector opposition resources, and legal analyses informing this brief:

- Federal Register notice, January 28, 2026: 91 Fed. Reg. 3726, OMB Control Number 3090-0290.
- GSA proposed certification text, revised February 18, 2026, regulations.gov docket GSA-GSA-2026-0001.

- Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," January 21, 2025.
- Executive Order 14398, "Addressing DEI Discrimination by Federal Contractors," March 26, 2026.
- U.S. Department of Justice, "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," July 29, 2025.
- National Council of Nonprofits and NAACP Legal Defense Fund, joint sign-on letter (1,300 signatories).
- Council on Governmental Relations (COGR), comment letter to GSA.
- National Women's Law Center, analysis of proposed certification requirements.
- Grant Professionals Association, comment letter on SAM.gov certification proposal.
- Legal analyses from BDO, Feldesman Leifer, Jenner and Block, Venable, Akin Gump, Foley Hoag, Berkshire Associates, Inside Government Contracts, EducationCounsel, and Ward and Berry.

## About the Signal Report

The Signal Report is The Herron Group's ongoing brief on the forces reshaping how mission-driven organizations measure impact, design systems, and implement AI. The forces that matter most rarely announce themselves. They surface in policy drafts, regulatory filings, enrollment data, and workforce trends before they become headlines. The Signal Report translates what we are tracking into what it means for the institutions we serve.

The Herron Group is a consulting and technology firm based in Oklahoma City, working with K-12 and higher education institutions, nonprofits, public sector agencies, and tribal nations on measurement design, systems strategy, and AI implementation. We are not a law firm and do not provide legal advice. We help leaders think clearly about programs, evidence, and systems so the conversations they have with their counsel, their boards, and their funders are productive ones.

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