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March 30, 2026

General Services Administration  
1800 F Street  
Washington, DC 20405

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

Dear Review Committee:

The NSBA respectfully submits to the General Services Administration, our comments on Information Collection 3090-0290, System for Award Management Registration Requirements for Financial Assistance Recipients.

The National School Boards Association ("NSBA") was founded in 1940 for the purpose of ensuring that each student everywhere has access to excellent and equitable public education, governed by high-performing school board leaders and supported by the community. With members spread across the United States, the United States Virgin Islands, and Canada, NSBA is the only national organization representing school boards and is widely acknowledged as the leading advocate for its member associations, member public schools, and their school board members.

The General Services Administration ("GSA") proposes adding new provisions that would require applicants, both when initially registering in the system for award management (SAM.gov) and during each annual renewal cycle, to certify that they will comply with the U.S. Constitution, federal law, and relevant executive orders prohibiting discrimination based primarily on race and sex. Under this certification recipients would be required to certify that they will not include Diversity, Equity, or Inclusion (DEI) initiatives in their policies or programs, and they will have to promise that they will not "fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety." Recipients found to be in violation of these provisions will be subject to criminal or civil penalties under the Federal False Claims Act.

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School districts are among the largest recipients of federal funding, and as such their administrators will be signing these certifications in large numbers. After reviewing the proposed changes, we are concerned that the certifications being asked to sign are inconsistent with settled federal law, that the Executive Orders upon which this certification is based are vague and lead to ambiguity and confusion, and the requirement to sign the certification will have a chilling effect on recipients who need federal funding.

### **The Requested Certifications Impose Standards that Exceed Existing Federal Anti-discrimination Law and the Requirements of Those Laws**

The anti-discrimination certification asks recipients to certify that they will comply with the U.S. Constitution, federal anti-discrimination laws, and executive orders (which appear to include Department of Education guidance) that prohibit illegal discrimination. However, the executive order and the guidance that state that DEI is prohibited discriminatory behavior is not consistent with federal law, which does not recognize the use of DEI as a violation of federal law

The Fourteenth Amendment of the Constitution of the United States has been interpreted as prohibiting discrimination on the basis of race, color, religion, sex and national origin. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq, and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. contain the same prohibitions. Additionally, Executive Order 14173 from January 21, 2025, follows the law prohibiting illegal discrimination. However, the Executive Order exceeds statutory and constitutional provisions by prohibiting DEI initiatives, which are not prohibited by federal law.

Executive Orders do not have the force and effect of law. By requiring recipients to certify that they are complying with Executive Orders, the Certification forces recipients to comply with provisions that exceed the scope of what is in federal law, subjecting them to penalties for acts that do not violate the law.

### **The Certification is Vague and Creates Ambiguity and Confusion**

The certification requires recipients to promise not to violate federal anti-discrimination law. Yet, by including The Executive Order and the relevant guidance it is not clear as to what practices recipients should avoid if they want to stay in compliance. It does not define what practices

Although the Executive Order and Department of Education guidance indicates that DEI initiatives constitute illegal discrimination, they do not define DEI, nor do they outline what specific practices constitute DEI. There are some examples that indicate common practices such as “cultural competency” training, “overcoming obstacles” narratives, and “diversity statements” are among an incomplete list of activities that constitute DEI; however, they do not define which

specific practices violate the provisions and as such, leave school districts in a position of not knowing which practices violate the law and which don't. This ambiguity is all the more serious when you consider that the administrators signing the certifications can be criminally prosecuted if they unintentionally make false statements.

The policy's lack of a definition for DEI creates serious problems, particularly for schools and systems that use the term more broadly to encompass services for students with disabilities or students from economically disadvantaged backgrounds. Under that broader interpretation, Title I and IDEA funding both require activities that some would characterize as DEI initiatives. Schools receiving either of those federal funding streams could therefore be deemed ineligible for grants under this policy, potentially disqualifying a vast swath of public schools from participation despite their lawful compliance with longstanding federal law.

Further, given the ambiguity and confusion associated with the policy and the certification process, we believe these processes alone will create conditions for increased litigation, as such, causing undue and unnecessary strains on the fiscal resources of school districts.

Notwithstanding, when local boards of education are expected to defend legal matters already determined by existing laws, it vanishes the financial resources available to educate students. To that end, we suspect it will become untenable for local boards of education to manage the associated legal hurdles of these, and other activities associated with the legal theory provided in the Executive Order and the aforementioned proposed regulation.

Finally, school boards of education face a high probability of exposure to litigation with both local, state, and federal court, as existing laws are grossly at odds with the Executive Order and other applicable legal guidance portrayed in this proposed regulation. For these reasons, we urge the General Services Administration to not cause further strains on the existing financial resources of school districts across the country to attend to settled legal matters.

### **Fear of Being Prosecuted for Making False Statements on the Certification will have a Chilling Effect on School Districts**

School districts are major recipients of federal funding. Federal funds in schools are used to provide education and services to those children who are most in need. Because of the new certifications and the penalties associated with making false statements, many schools will likely forego the opportunity to obtain federal funds that are most beneficial to their students.

In light of these concerns, NSBA respectfully urges the General Services Administration to reconsider the proposed certification requirements. As drafted, they exceed the bounds of established federal anti-discrimination law, rely on vague and undefined terms that create significant compliance uncertainty, and risk deterring school districts from accessing essential federal funds that support the nation's most vulnerable students. School districts should not be

placed in the untenable position of choosing between critical resources and the possibility of civil or criminal liability based on ambiguous standards. We therefore encourage GSA to revise the proposal to ensure clarity, consistency with federal law, and the continued ability of school districts to serve all students effectively and equitably.

We appreciate the opportunity to comment on Information Collection 3090-0290, System for Award Management Registration Requirements for Financial Assistance Recipients. If you have any questions regarding these comments, please contact Dr. Phelton Moss at [pmoss@nsba.org](mailto:pmoss@nsba.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Verjeana McCotter-Jacobs". The signature is written in a cursive style with a large, stylized initial "V".

Verjeana McCotter-Jacobs, Esq.  
Executive Director and Chief Executive Officer