ROB BONTA
ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

March 27, 2026

**Via Federal Rulemaking Portal**

Administrator Edward Forst
General Services Administration
GSA Building
1800 F Street NW
Washington, D.C. 20405

**Re: Information Collection 3090-0290, System for Award Management Registration Requirements for Financial Assistance Recipients (Fed. Reg. Doc. # 2026-01676)**

Dear Administrator Forst:

We, the Attorneys General for the States of New York, California, Arizona, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Hawai'i, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and Wisconsin ("the States") write in opposition to the General Services Administration Notice entitled "System for Award Management Registration Requirements for Financial Assistance Recipients" ("the Notice"), which was issued by the General Services Administration ("GSA") and published in the Federal Register on January 28, 2026.[1]

The Notice states that its purpose is to "update the Financial Assistance General Representations and Certifications"—which all federal funding applicants and recipients must attest to in order to register with the federal government's System for Award Management ("SAM.gov")—to "align" those certifications with "updated executive branch guidance."[2] On February 18, 2026, GSA published a Supporting Statement (together with the Notice, "GSA's Proposal" or "the Proposal"), which provides a redline showing GSA's proposed changes to the current certification document.[3] If implemented, the Proposal would require all federal funding recipients to attest to the new certifications in the Proposal, thereby implicating billions of dollars in federal funding administered by a host of federal agencies under numerous statutory schemes.

[1] *Information Collection; System for Award Management Registration Requirements for Financial Assistance Recipients*, 91 Fed. Reg. 3726 (Jan. 28, 2026).
[2] *Id.*
[3] Supporting Statement: 3090-0290; System for Award Management Registration Requirements for Financial Assistance Recipients – DRAFT, ID GSA-GSA-2026-0001-0007 (Feb. 18, 2026) ("Supporting Statement").

At the threshold, it is unclear whether GSA intends the Proposal to change what is required of funding recipients under the status quo. The Proposal appears to simply require funding recipients to certify their compliance with established federal law, which States and other funding recipients already attest to on a recurring basis. To the extent that GSA does not intend to change what is required of funding recipients, it is unclear why GSA has put forth the Proposal in the first place, and the Proposal fails to comply with the Paperwork Reduction Act because it is unnecessary, duplicative, and more burdensome than necessary. And even if GSA does not intend to require anything additional of funding recipients, the Proposal threatens to chill legitimate activities of funding recipients who are uncertain of its meaning and fear the significant punitive sanctions that are threatened for noncompliance. The Proposal also requires States to certify their compliance with 8 U.S.C. § 1324, which does not apply to them. Moreover, because compliance with the certifications purports to be enforceable under the False Claims Act[4]—and, under the Proposal, the Administrative False Claims Act[5]—which permit enforcement actions brought by private parties, States and other funding recipients may be burdened by threats of enforcement actions, even if those Acts do not apply to States and even if GSA itself does not intend the Proposal to change what is required of funding recipients.

Moreover, to the extent that GSA *does* intend the Proposal to change what is required of funding recipients—and specifically, to require funding recipients to comply with this Administration's vague and contested interpretations of federal antidiscrimination law, the scope of 8 U.S.C. § 1324, and expanded conception of threats to national security (that include lawful speech and conduct), the Proposal is unlawful—under the Paperwork Reduction Act, the Administrative Procedure Act, and the Constitution.

GSA should withdraw the Proposal, or in the alternative, the Office of Management and Budget ("OMB") should deny GSA's requested information collection revision.[6]

## I. The Proposal Violates the Paperwork Reduction Act

The Paperwork Reduction Act governs federal agencies' collection of information from the public. The Act's intent is to "minimize the paperwork burden[s]" imposed on the public and avoid unnecessary requests for information.[7] Before an agency can collect information from the public or revise an existing information collection, it must submit its proposal for review and approval by the Office of Management and Budget ("OMB").[8] Notice of the proposed collection must also be published in the Federal Register for a 60-day public comment period on statutorily required topics, including the necessity of the information collection; the quality, utility, and clarity of the information to be collected; the burden on the public of providing the information; and the accuracy of the agency's estimate of that burden.[9]

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[4] 31 U.S.C. §§ 3729-3733; 18 U.S.C. §§ 287, 1001.
[5] Supporting Statement at 9 (citing 31 U.S.C. § 3801 *et seq*.)
[6] The undersigned States have included numerous citations to supporting sources in footnotes to this letter, including direct links to the sources. We direct GSA to review each of the materials cited, and request that the full text of each of the cited materials, along with the full text of our comment, be considered part of the record for purposes of the PRA. If GSA will not consider these materials as part of the record in its current form, we ask that you notify us and provide us an opportunity to submit copies of the materials for the record.
[7] 44 U.S.C. § 3501(1).
[8] *Id.* § 3507(a).
[9] *Id.* § 3506(c)(2).

Following the public comment period, the agency must review and respond to comments and certify, using supporting records or public comments, that the proposed collection of information meets ten statutory criteria, including that the collection is "necessary for the proper performance of the functions of the agency," and that it "reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency."[10] To obtain OMB's approval, the agency must demonstrate that its proposed information collection is "the least burdensome necessary" for the proper performance of its functions, "not duplicative of information otherwise accessible to the agency," and has practical utility.[11] OMB in turn "shall determine" whether the agency's proposal is "necessary for the proper performance of [its] functions," and "the burden of the collection of information is justified by its practical utility," taking into account the preceding criteria.[12] Where the agency fails to make the required showing, and "to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such [information] collection or portion thereof."[13]

GSA's proposed additions to its existing certification requirements are unnecessary and duplicative, in violation of the Paperwork Reduction Act. GSA fails to explain why the Proposal is necessary for the proper performance of the agency's functions, which are to "procure and supply personal property and nonpersonal services for executive agencies to use in the proper discharge of their responsibilities, and [to] perform functions related to procurement and supply[.]"[14] GSA's mandate is far afield from ensuring compliance with federal laws administered by other agencies, and from determining proper certifications for federal awards spanning the entire federal government.

Moreover, as described above, to the extent the Proposal simply requires funding recipients to certify their compliance with federal law—*as they already do under the status quo*—the Proposal's changes are unnecessary and duplicative. The Proposal's new antidiscrimination certification language, for instance, appears to do nothing more than require funding recipients to certify that they comply with federal antidiscrimination laws, and is therefore duplicative of both GSA's existing antidiscrimination certification language and of certification requirements typically imposed by federal awarding agencies in the federal awards themselves. Nor has GSA explained why it is necessary, and not duplicative of other federal law, that funding recipients be required to certify that they do not engage in "illegal activities that threaten public safety or national security." As another example, it is unclear why it is necessary for GSA to require funding recipients to certify compliance with 8 U.S.C. § 1324. As discussed further below, GSA has no authority to expand that provision's scope or applicability through SAM.gov funding certifications. Such provision is also unrelated to the vast majority of federal funding and therefore cannot be imposed as a condition on most federal grants. It is thus unclear why it is necessary or appropriate for GSA to add such a certification to SAM.gov.

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[10] *Id.* § 3506(c)(3); 5 C.F.R. § 1320.9.
[11] 5 C.F.R. § 1320.5(d)(1).
[12] *Id.* § 1320.5(e).
[13] *Id.* § 1320.5(f).
[14] 40 U.S.C. § 501(b)(1)(A); *see also* U.S. Gen. Servs. Admin., *Mission and Background* (last updated Oct. 20, 2023), https://www.gsa.gov/about-us/mission-and-background (stating that the agency's mission is to "deliver the best customer experience and value in real estate, acquisition, and technology services to the government and the American people").

Finally, GSA underestimates the burdens imposed by the Proposal, and it fails to satisfy its obligation under the PRA to show that the Proposal is the "least burdensome necessary."[15] GSA estimates that the burdens will amount to 2.75 hours and cost $55.15 per response, with a total burden on the public of $33,784,338.50 annually.[16] GSA fails to adequately explain its estimate.[17] The true burden is likely much higher, given the danger discussed above that whether or not GSA intends the Proposal to require more of funding recipients, the Proposal threatens to chill legitimate activities of funding recipients who are uncertain of its meaning and who fear the significant punitive sanctions that purportedly attach to noncompliance. Funding recipients may believe they need to establish new processes to document their compliance with the Proposal's terms, particularly given the Proposal's repeated new citations to "2 C.F.R. § 200.303 Internal controls."[18] Recipients may feel compelled, for example, to establish new processes and documentation to demonstrate that they do not use funds to "subsidize" or "facilitate" "illegal activities that threaten public safety or national security"—the meaning of which is undefined and unclear. The lack of clarity in this and other provisions of the Proposal also violate the PRA's requirement that information collections be "written using plain, coherent, and unambiguous terminology" and be "understandable to those who are to respond."[19]

In short, GSA's Proposal would violate the PRA because it is not necessary for the proper performance of GSA's functions; the burdens it imposes are not justified by any practical utility; the requirements are certainly not "the least burdensome necessary"; and its requirements are unclear.[20] GSA should withdraw the proposal, or OMB must reject it.[21]

## II. To the Extent the Proposal Imposes New Substantive Requirements on Funding Recipients, It Violates the Administrative Procedure Act

As noted above, it is not clear that the new certification requirements in the Proposal are intended to impose any new substantive requirements. To the extent, however, that the proposed certification language *is* intended, interpreted by funding recipients, or enforced against funding

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[15] 5 C.F.R. § 1320.5; *see also* 44 U.S.C. § 3506(c)(3).
[16] Supporting Statement at 3-5; *see also* 91 Fed. Reg. 3726
[17] GSA appears to adopt an extraordinarily narrow conception of the respondent activity relevant to the burden, which is contrary to federal law. *Compare* Supporting Statement at 3, *with* 5 C.F.R. 1320.3(b)(1) (defining "Burden" broadly).
[18] Supporting Statement at 8-10.
[19] *See* 44 U.S.C. § 3506(c)(3)(D).
[20] *See id.* § 3506(c)(3) (requiring an agency to "certify . . . that each collection of information submitted to the Director [of the Office of Management and Budget] for review . . . is necessary for the proper performance of the functions of the agency," "is not unnecessarily duplicative of information otherwise reasonably accessible to the agency," and "reduces to the extent practicable and appropriate the burden on persons who shall provide information"); 5 C.F.R. § 1320.5(d)(1) ("To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information . . . [i]s the least burdensome necessary for the proper performance of the agency's functions . . . , [i]s not duplicative of information otherwise accessible to the agency, and [h]as practical utility.").
[21] *See* 5 C.F.R. § 1320.5(e) ("OMB shall determine whether the collection of information . . . is necessary for the proper performance of the agency's functions" and "will consider whether the burden of the collection of information is justified by its practical utility."); *id.* § 1320.5(f) ("[T]o the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof.").

recipients to impose new substantive requirements on funding recipients, it violates the APA in several different ways.

A. GSA Failed to Follow Required Procedures.

First, GSA's Proposal unlawfully bypasses the APA's notice-and-comment procedures. The Proposal, if intended to impose new substantive requirements, would constitute a "rule" under the APA, because it would qualify as an "agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy."[22] More specifically, it would constitute a "substantive" or "legislative" rule because it would "impose[] new rights or duties."[23] As such, the Proposal would be required to undergo APA notice-and-comment procedures, as courts considering analogous requirements have held.[24] The APA's notice-and-comment procedures differ in focus from those provided under the PRA.[25] GSA's failure to provide a proper APA comment period for the actions set forth in the Proposal therefore contravenes the APA.[26]

B. The Proposal Is Arbitrary and Capricious.

To the extent the Proposal is intended to impose new substantive requirements, it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA.[27] An agency action is arbitrary and capricious "if it is not reasonable and reasonably explained."[28] Agency decisions are not reasonably explained when, among other things, "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[29] Where an agency changes a prior position, it is required to "display awareness that it *is* changing position" and "must show that

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[22] 5 U.S.C. § 551(4).

[23] *Children's Hosp. of the King's Daughters, Inc. v. Azar*, 896 F.3d 615, 620 (4th Cir. 2018) (quoting *Jerri's Ceramic Arts, Inc. v. Consumer Prod. Safety Comm'n*, 874 F.2d 205, 207 (4th Cir. 1989)) (distinguishing between legislative and interpretative rules).

[24] *See Nat'l Educ. Ass'n v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 149, 199–200 (D.N.H. 2025) ("*NEA*"); *Am. Fed'n of Tchrs. v. Dep't of Educ.*, 796 F. Supp. 3d 66, 102–03 (D. Md. 2025) ("*AFT*").

[25] For instance, the PRA's comment process is focused on questions related to the utility, necessity, and burdens of information collection. The APA's comment process is broader and invites comments on, among other things, fairness to affected parties.

[26] *See* 5 U.S.C. § 553(b)–(d). GSA's Proposal may also run afoul of other federal procedural requirements. For instance, Executive Order 12866 requires the Executive Branch to adopt regulatory approaches that avoid "duplicative regulations" and that "impose the least burden on society," as well as maximize net benefits. Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993). As discussed above, the Proposal appears to have no practical utility and is duplicative of existing federal statutes while imposing new burdens on funding recipients. As another example, Executive Order 13132 requires that a federal agency considering a policy with "federalism implications" must "ensure meaningful and timely input by State and local officials . . . early in the process of developing the proposed regulation." Exec. Order No. 13132, 64 Fed. Reg. 43255 (August 10, 1999). Other executive orders and statutes impose additional requirements. *See, e.g.*, Exec. Order No. 14192, 90 Fed. Reg. 9065 (February 6, 2025); Unleashing Prosperity Through Deregulation; the Regulatory Flexibility Act (RFA), Pub. L. No. 96-354, 94 Stat. 1164 (1980); Unfunded Mandates Reform Act of 1995 § 202, Pub. L. No. 104-4, 109 Stat. 48, 64.

[27] 5 U.S.C. § 706(2)(A).

[28] *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 292 (2024).

[29] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*").

there are good reasons" for its new policy.[30] Moreover, an agency must provide a "more detailed justification" for a change in position where "its prior policy has engendered serious reliance interests that must be taken into account."[31] And the agency must consider reasonable alternatives "that are within the ambit of the existing policy."[32]

At the threshold, to the extent the Proposal is intended to impose new substantive requirements, GSA has failed to adequately explain why it is departing from its prior certification requirements or why additional certifications are necessary. Nor does it explain why awarding agencies' certification requirements are inadequate.

The Proposal is also arbitrary and capricious because GSA has failed to explain why it is rational for the agency to purport to implement language from an executive order that multiple courts have enjoined or limited. GSA states that the Proposal would update the SAM.gov certifications "to align with . . . Executive Order (E.O.) 14173." Multiple courts, however, have found that requiring funding recipients to certify compliance with Executive Order 14173 is unlawful or is likely unlawful.[33] GSA nowhere acknowledges these decisions and nowhere explains why it is nonetheless appropriate to modify its certification language to encompass that Executive Order. GSA also fails to acknowledge that courts have enjoined other federal agencies from implementing similar antidiscrimination certification requirements.[34] It has failed to explain why it is not bound by those prior decisions or why it is otherwise proper for it to impose similar sorts of requirements. This, too, is arbitrary and capricious.[35] GSA fails to acknowledge the potential chilling of lawful activity and threat of arbitrary enforcement that results when funding recipients are required to conform their conduct to vaguely worded requirements and threatened with significant penalties if they fail to do so.[36]

In addition, GSA's Proposal is arbitrary and capricious because it fails to connect the facts found to the choices it made, fails to demonstrate awareness that it is changing position (for example, in purporting to require States to comply with 8 U.S.C. § 1324 when that statute does not apply to them), and fails to consider any reasonable alternatives, such as relying on individual awarding agencies to impose any certification requirements they deem appropriate in the context of specific awards. Finally, the Proposal is arbitrary and capricious because GSA has failed to acknowledge and consider the serious reliance interests of States and other funding recipients—for example, the costs imposed on funding recipients to track and document compliance with additional terms and conditions.

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[30] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
[31] *Id.*
[32] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (quoting *State Farm*, 463 U.S. at 51).
[33] *See, e.g.*, *Martin Luther King Jr. County v. Turner*, 798 F. Supp. 3d 1224, 1236 (W.D. Wash. 2025); *City of Seattle v. Trump*, 808 F. Supp. 3d 1204, 1209 (W.D. Wash. 2025).
[34] *AFT*, 796 F. Supp. 3d. 66 (D. Md. 2025) (vacating a DEI-related certification requirement imposed by the Department of Education).
[35] *See, e.g.*, *Ass'n of Am. Universities v. Dep't of Def.*, 806 F.Supp.3d 79, 109 (D. Mass. 2025) (finding agency's failure to address judicial decisions invalidating similar policies constituted arbitrary and capricious decisionmaking).
[36] *See generally AFT*, 796 F. Supp. 3d at 108; *NEA*, 779 F. Supp. 3d at 187; *Nat'l Ass'n for Advancement of Colored People v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 53, 66 (D.D.C. 2025).

C. The Proposal Is Contrary to Law, Contrary to Constitutional Right, and In Excess of Statutory Authority.

To the extent the Proposal is intended to impose new substantive requirements, it is also contrary to law, contrary to constitutional right, and exceeds GSA's authority, in violation of the APA.

As a preliminary matter, agencies are "creatures of statute" and "possess only the authority that Congress has provided."[37] Congress has not delegated authority to GSA to attach these conditions.[38] The GSA lacks authority to mandate compliance with contested executive orders and executive guidance, if that is what the proposal is intended to do.[39] GSA's SAM.gov is a repository of standard information about applicants for and recipients of federal funding, in keeping with the agency's statutory functions.[40] OMB—not GSA—issues guidance to federal agencies on government-wide policies for the award and administration of federal funding,[41] and even that guidance is not binding on each agency, but rather must be given effect through agency-specific regulations and guidance documents.[42] GSA surely lacks authority to establish certification requirements for all funding streams across the federal government, as well as to bind funding recipients to executive guidance that has been vacated.

For many federal funding streams—such as formula funding streams—Congress has specifically delineated the requirements for individuals, entities, and states to receive funding, and in some funding streams, Congress has expressly sought to protect state and local control over the relevant area.[43] Moreover, in some instances, Congress has required agencies to consider diversity, equity, inclusion, and accessibility in allocating federal funds.[44] And

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[37] *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab.*, *Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022); *see also See Louisianna Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986) ("An agency literally has no power to act . . . unless and until Congress confers power upon it.").

[38] *See* U.S. Const. art. I, § 8, cl. 1; art. I § 9, cl. 7; *see also City & Cnty. of San Francisco*, 897 F.3d at 1231 (stating that "the Spending Clause . . . vests exclusive power to Congress to impose conditions on federal grants").

[39] In any event, executive orders do not create binding legal obligations on states or non-federal actors unless supported by statutory or constitutional authority. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) ("The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'") (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). And executive branch guidance, while binding on federal agencies, does not have the force of law. *See Pub. Citizen v. Burke*, 843 F.2d 1473, 1479 (D.C. Cir. 1988) (holding that an Office of Legal Counsel memorandum did not have the force of law); *Am. Hist. Ass'n v. Nat'l Archives & Recs. Admin.*, 516 F. Supp. 2d 90, 111 (D.D.C. 2007) (same); *Cherichel v. Holder*, 591 F.3d 1002, 1016 (8th Cir. 2010) (same).

[40] *See* 40 U.S.C. § 501(b)(1)(A).

[41] *Id.* § 1.100.

[42] *See id.* §§ 1.105, 1.220.

[43] *See, e.g.*, 20 U.S.C. § 3403(b) (expressly prohibiting the Department of Education from "exercis[ing] any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution"); *id.* § 7842(b)(3) (expressly limiting the Department of Education to demanding "only . . . assurances . . . that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application").

[44] *See, e.g.*, *San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F.Supp.3d 716, 744 (N.D. Cal. 2025) ("[B]oth the statutes prescribing AmeriCorps' priorities and authorized activities and AmeriCorps' scoring criteria for grant proposals illustrate the centrality of diversity, equity, inclusion, and accessibility in AmeriCorps-funded programs."); *Martin Luther King, Jr. Cnty. v. Turner*, 798 F.Supp.3d 1224, 1251 (W.D. Wa. 2025) ("Congress *requires* consideration of diversity when allocating HUD funds."). Moreover, Section 504 of the Rehabilitation Act in some instances requires differential treatment to ensure meaningful access and inclusion. 29 U.S.C. § 701, *et seq*.

Congress has established specific enforcement procedures for federal civil rights statutes that are remedial, rather than punitive, and cannot be sidestepped.[45]

Furthermore, the Proposal would require the undersigned States to certify compliance with 8 U.S.C. § 1324, a federal law that prohibits "any person" from harboring, concealing, or shielding an "alien" "knowing or in reckless disregard of the fact that [the] alien has come to, entered, or remains in the United States in violation of law." By its terms, however, that law does not apply to the States.[46] Compliance with 8 U.S.C. § 1324—an immigration statute—also bears no relationship to the vast majority of federal funding. GSA is imposing additional requirements on countless funding streams that GSA is not authorized to impose, and the imposition of which violates the separation of powers enshrined in the Constitution.[47] This and other new certification requirements in the Proposal are also vague, in violation of the Spending Clause's clear notice requirement. *See infra* § III. Imposition of these certification requirements would also violate the Spending Clause's relatedness requirement. *See infra id.* And to the extent that GSA intends to attach new punitive enforcement mechanisms, by virtue of its insertion of 2 C.F.R. § 200.303 alongside each new substantive certification in the Proposal, such action is unconstitutionally coercive, in violation of the Spending Clause. *See infra id*.

## III. The Proposal Violates Other Laws

To the extent the Proposal is intended to impose new substantive requirements, the Proposal violates other legal constraints as well, including those imposed by the Constitution's Spending Clause. The Spending Clause requires that terms and conditions attached to federal funding be clear and unambiguous and "reasonably related to the federal interest in particular national projects or programs."[48] Yet the Proposal's terms are vague. As an example, it is not clear what GSA intends by requiring funding recipients to certify that they will not "fund, subsidize, or facilitate violence, terrorism, or other illegal activities that threaten public safety or national security."[49] To take another example, the certification language requires compliance with "relevant executive orders prohibiting unlawful discrimination on the basis of race or color,"[50] but it does not specify which executive orders it is referring to, whether this requires compliance with executive orders that post-date the certification, or whether and to what extent executive orders bind parties other than federal agencies.[51] The Proposal's terms are also certainly not "reasonably related" to every federal funding stream. For instance, it is not at all clear how compliance with 8 U.S.C. § 1324, an immigration term, reasonably relates to the vast

[45] *See, e.g.*, 42 U.S.C. § 2000d-1.
[46] 8 U.S.C. § 1324(a)(1)(A); *id.* § 1101(b)(3); *cf. id.* § 1101(a)(36) (defining "State").
[47] As the Supreme Court has explained, "[u]nlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy." *Bennett v. Ky. Dep't of Educ.*, 470 U.S. 656, 669 (1985); s*ee also Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990).
[48] *Massachusetts v. United States*, 435 U.S. 444, 461 (1978).
[49] Supporting Statement at 9.
[50] *Id.* at 8.
[51] Although "Congress' power to legislate under the spending power is broad, it does not include surprising participating States with post acceptance or 'retroactive' conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981); *see also City of Los Angeles v. Barr*, 929 F.3d 1163, 1174–75 (9th Cir. 2019) ("Congress goes too far when it surprises states with 'post acceptance or "retroactive" conditions.'" (quoting *Pennhurst*, 451 U.S. at 25)).

majority of federal funding streams. And as discussed above, threatening punitive enforcement for noncompliance is unconstitutionally coercive.

Also as noted above, to the extent the Proposal is intended to impose new substantive requirements beyond federal law, the Proposal appears to violate the Appropriations Clause and separation of powers principles by imposing additional certification requirements on funding streams that Congress did not authorize and did not intend to impose.[52]

## IV. GSA's Proposal Threatens to Chill Legitimate and Lawful Activities

Regardless of whether GSA intends to impose new substantive requirements on funding recipients, there will undoubtedly be confusion and uncertainty among funding recipients about whether the certification language imposes new requirements. Particularly in light of the vagueness of some of the terms and the significant costs that could accompany a determination that a funding recipient has run afoul of the requirements—including the potential disruption of critical federal funding or threats of False Claims Act or other enforcement actions—many funding recipients may curtail entirely legitimate and lawful activity to avoid such risks. Such curtailment could have significant adverse impacts on the provision of critical services in our States. For instance, organizations that provide legal services and support to immigrants may stop providing such services out of fear of allegations that they have somehow violated 8 U.S.C. § 1324, even where such conduct is entirely lawful. Unfortunately, such fears are not unfounded or unreasonable. In *Chicago v. U.S. Department of Homeland Security*,[53] for instance, the Department of Homeland Security froze funding based on generalized claims that grant recipients were "engaged in or facilitating illegal activities" related to immigration, even though the court ultimately found the agency offered no factual support for those allegations.[54] Such freezes, even if ultimately unjustified, can have deleterious consequences for funding recipients, prompting them to avoid activities that the federal government may target in an enforcement action based on its agenda.

## V. Conclusion

In light of the foregoing, the undersigned Attorneys General strongly urge GSA to withdraw the Proposal or, alternatively, strongly urge OMB to deny GSA's requested information collection revision.

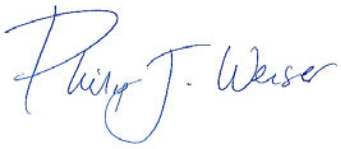
Sincerely,

Rob Bonta
Attorney General of California

Letitia James
Attorney General of New York

[52] *See Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990).
[53] No. 25-cv-05463, 2025 WL 3043528 (N.D. Ill. Oct. 31, 2025).
[54] *Id.* at *24.

Kristin Mayes
Attorney General of Arizona

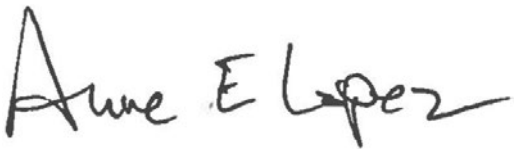


Philip J. Weiser
Attorney General of Colorado

William Tong
Attorney General of Connecticut

Kathleen Jennings
Attorney General of Delaware

Brian L. Schwalb
Attorney General for the District of Columbia



Anne E. Lopez
Attorney General of Hawai‘i

Kwame Raoul
Attorney General of Illinois

Aaron M. Frey
Attorney General of Maine

Anthony G. Brown
Attorney General of Maryland

Andrea Joy Campbell
Attorney General of Massachusetts

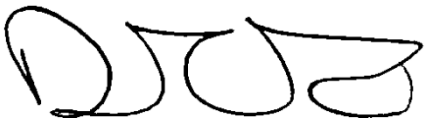
Dana Nessel
Attorney General of Michigan

Keith Ellison
Attorney General of Minnesota

Aaron D. Ford
Attorney General of Nevada

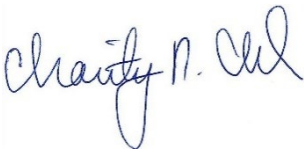
Jennifer Davenport
Attorney General of New Jersey

Raúl Torrez
Attorney General of New Mexico

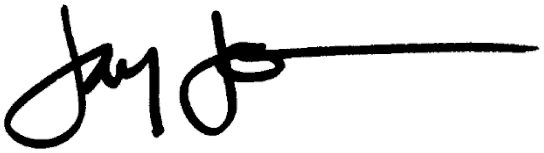


Dan Rayfield
Attorney General of Oregon

Peter Neronha
Attorney General of Rhode Island

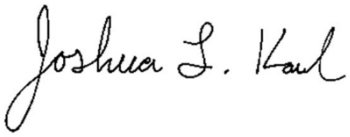


Charity R. Clark
Attorney General of Vermont



Jay Jones
Attorney General of Virgina

Nicholas W. Brown
Attorney General of Washington



Joshua L. Kaul
Attorney General of Wisconsin