ASSOCIATION OF PUBLIC & LAND-GRANT UNIVERSITIES

July 1, 2026

William F. Clark
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy,
Office of Government-wide Policy
General Services Administration
1800 F Street, NW
Washington, DC 20405

Office of Federal Procurement Policy (OFPP)
Office of Management and Budget (OMB)
Department of Defense (DOD)
General Services Administration (GSA)
National Aeronautics and Space Administration (NASA)

Re: OMB Control No. 9000-XXXX; Docket No. 2026-0067; Sequence No. 1; Addressing DEI Discrimination by Federal Contractors

Dear Director Clark,

On behalf of the Association of Public and Land-grant Universities (APLU), we write to provide comment on OMB Control No. 9000-XXXX; Docket No. 2026-0067; Sequence No. 1; Addressing DEI Discrimination by Federal Contractors to the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) (collectively the "Agencies"). APLU appreciates the responsibility of the federal government to appropriately steward taxpayer resources, protect civil rights and liberties of the nation, and ensure contractors are delivering on their responsibilities. For public universities, these obligations are core to their mission as extensions of state government in service to the public.

## I. Introduction

APLU is a membership organization that fosters a community of university leaders collectively working to advance the mission of public research universities. The association's U.S membership consists of more than 240 public research universities, land-grant institutions, state university systems, and affiliated organizations spanning across all 50 states, the District of Columbia, and six U.S. territories. The association and its members collectively focus on increasing student success and workforce readiness; promoting pathbreaking scientific research; and bolstering economic and community engagement. Annually, its U.S. member campuses enroll 4.5 million undergraduates and 1.4 million graduate students, award 1.3

million degrees, employ 1.3 million faculty and staff, and conduct $70 billion in university-based research.

APLU member institutions proudly partner with the government on federal contracts that efficiently implement projects critical to meeting the short- and long-term needs of our nation. APLU members use the expertise and experience of contractors and sub-contractors to implement programs more effectively and efficiently than the government could do itself in a setting that builds the nation's future workforce and scientific prowess. Our members see this as part of their service mission to the United States.

Federal contracts have long required certifications of compliance with law and regulation. Contractors, including APLU member institutions, certify many times across the contracting process that they follow relevant statutory and regulatory obligations of the United States. Historically, the government would ask for general compliance certification and, in certain cases, highlight relevant statutes and regulations of interest, but it would not create an unusual emphasis of one broadly applicable singular public policy area. The certifications to date are to clear standards in federal law. The proposed deviation from this longstanding approach presents complications that will substantially drive-up compliance costs and administrative spending, while shutting out potential federal contracting partners that can best accomplish work in the furtherance of national interests.

Specifically, in this comment letter, APLU outlines the following concerns:

1. The proposed new certifications violate the Paperwork Reduction Act;
2. The Agencies' approach sets a problematic public policy standard that will likely result in extreme policy swings for future administrations;
3. The new proposed certification approach transitions from settled law to unsettled administrative interpretation – which is currently the subject of litigation, resulting in compliance uncertainty and increased costs; and
4. The Agencies' proposed time burdens are highly inaccurate for the anticipated burden of public and land-grant university contractors and their sub-contractors.

Given the severity of APLU's concerns, we respectfully request that the Agencies withdraw the proposal and reorient to the longstanding contract certification practices that provide clarity and efficiency to federal contractors while ensuring adequate protections for the federal government and the resources it appropriately safeguards on behalf of the American people.

## II. The proposed new certification is inconsistent with the federal Paperwork Reduction Act

The Paperwork Reduction Act requires that agencies which intend to collect information from

the public or modify such collections "certify (and provide a record supporting such certification),"[1] among other things, that the collection is:

> "necessary for the proper performance of the functions of the agency, including that the information has practical utility; is not unnecessarily duplicative of information otherwise reasonably accessible to the agency; reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency…the use of such techniques as—establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond; the clarification, consolidation, or simplification of compliance and reporting requirements; or an exemption from coverage of the collection of information, or any part thereof; is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond; is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond…"[2]

In its proposed regulation, the Agencies have invited comment on "whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility." The Agencies have provided no evidence in the proposed regulation that the certifications to the March 26, 2026 Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors is "necessary for the proper performance" of the Agencies. The government has not met the evidentiary burden required by the Paperwork Reduction Act, nor provided evidence of the necessity and value of the collection, aside from a citation to an executive order (which does not have the force of law). As such, the evidentiary standard of the Paperwork Reduction Act is not met.

The information to be collected here is unnecessarily duplicative of information collected elsewhere. Federal contractors already certify compliance with federal law. To the extent that the new compliance language is accurately reflective of those laws, all contractors have already certified to comply. To the extent that the language is inconsistent with the manner in which courts would interpret the Constitution and relevant statutes, the new regulation is asking contractors to certify to an administrative opinion that is not reflective of binding law. Inasmuch as the new certification is an additional certification beyond that which these contractors have pledged for years, it is duplicative and runs afoul of the Paperwork Reduction Act.

Further, there is no breakdown by participating agency on how this certification is necessary or related to the contracts that each agency procures from contractors. There is no reference to statute or regulation. The burden under the Paperwork Reduction Act is on the federal government to so justify, and no justification is being offered aside from meeting the goals of

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[1] 44 U.S.C. §3506(c)(3).

[2] 44 U.S.C. §3506(c)(3)(A)-(E).

an executive order, which is not, in and of itself, a justification that the certification and its underlying tasks are "necessary for the proper performance of the functions of Federal Government."

Further, as described in Section V, below, the proposed new certification requirements do not reduce the burden of federal contracting, but instead increase it significantly. The level of detail in the required response, lack of basis in settled law for the certification, and the requirement to certify to vague standards for sub-contractors are all examples of this increased burden. The anticipated burden of this proposal rises not just for contractors, but also the federal government – which will have to audit contractors and sub-contractors under vague standards that may change under court injunctions or decisions.

Further, the proposal does not offer differing standards to account for smaller or less sophisticated contractors or sub-contractors. There are no published efforts to clarify, consolidate, or simplify the reporting requirements for some or all contractors. The proposal does not include any language to exempt certain contractors, such as federal fund recipient colleges and universities that already certify compliance with federal law in the Department of Education's Program Participation Agreement and other federally required documentation. The failure to consider and propose different options for contractors of different sizes and sophistication, as well as contractors who already certify to compliance with the Constitution and federal laws elsewhere is inconsistent with the plain language of the Paperwork Reduction Act.

Additionally, the Paperwork Reduction Act requires such certification to be "written using plain, coherent, and unambiguous terminology…understandable to those who are to respond." The certification requirement of this proposal transitions away from the longstanding federal approach of certification to statute and settled law towards sub-regulatory interpretations not found in constitutional or statutory language. The language of the executive order to which contractors will certify is vague and subject to multiple interpretations, while currently the subject of litigation on multiple fronts.

To that end, the proposed new questions do not advance the statutory goal of "plain, coherent, and unambiguous" language. In fact, the proposal moves to require certification to concepts appearing only in an executive order that are complex and ambiguous and do not have the force of law of a statute.

Finally, the Paperwork Reduction Act requires that changes be "implemented in ways consistent and compatible, to the maximum extent practicable, with [respondent's] existing reporting and recordkeeping practices." The federal contracting certification has been generally consistent for many years, with changes around the margins. The new proposed approach meaningfully diverges from the standard and consistent certifications used across federal administrations of different political parties for many years and cannot be said to be "consistent and compatible" with the longstanding approach as the law requires.

For the aforementioned reasons, APLU strongly believes the proposal does not meet the statutory thresholds established by the Paperwork Reduction Act, which are rightfully aimed at minimizing the burden on contractors and the government, maximizing utility of information collected, and enhancing efficiencies. For public universities, wasted resources are taxing on state expenditures and the communities these vital institutions serve.

### III. The Agencies' approach sets a problematic public policy standard that will likely result in extreme policy swings for future administrations

The new proposed certification is not related to a statute or longstanding regulation but to a recently promulgated executive order. Executive orders can be issued or withdrawn easily by successive federal administrations. By requiring contractor and sub-contractor certification to an executive order that may be replaced by a contradictory executive order in the future, this proposal sets a precedent for future administrations to require certification to unsettled policy-based interpretations thus making contractor participation more difficult and the process less efficient.

While federal contractors, including APLU members, have long certified to statutory requirements, this new approach will set a precedent for future administrations of different political parties to modify the certifications based on the non-binding interpretations and positions of that administration. This could mean that the questions begin to change with each election, potentially as often as every four years, tracking the political interests of each successive administration. This will be expensive for the government to keep modifying the system and will deeply unsettle the federal contracting system as contractors may be unable or unwilling to certify to the interpretive statements of one government or the other. This will disrupt the goal of federal contracts—to engage partners that can efficiently and cost-effectively meet the strategic imperatives of the United States.

If this certification is finalized in this form, there is little to stop a future administration of another political viewpoint from deleting the instant certification and returning to the status quo ante, or from adding new and different certifications that the current administration would find unacceptable. This could give rise to a movement from standard certifications targeted to legal compliance, risk management, and accounting standards to fracturing questions that are driven by which party controls the White House. While certain states led by governors of one political party may oppose the instant proposed certifications as inconsistent with their state laws, a future president of a different political party may include contract certifications that contractors in other states find incompatible. The result will be additional costs for the federal government, litigation over language, and costs and complications for contractors. Eventually, as the different certifications calcify by the political party of the then-current administration, contractors who conduct important work on behalf of the United States may choose to opt in or opt out, not based upon their ability and interest in performing the work, but based upon whether they find the certification palatable or not. This is not a value judgment on these particular questions, but a concern over the public policy implications of adding questions that are based on policy interpretations and not settled law.

In *Loper Bright v. Raimondo*[3] and related cases, the Supreme Court cautioned against rapid changes in sub-regulatory and regulatory interpretations and enforcement of less detailed statutes. The Court was concerned with agency interpretations that are not supported by the clear language of a statute and observed that such clarity of what is required should, in our system, be offered by Congress. The Court's decisions offer more deference when reviewing administrative actions that are developed with congressional approval, are closer to the text of the statute, are longstanding in interpretation, and do not change interpretations based on the leadership of the executive branch. This regulation and the executive order upon which it is based offer none of the four standards the Supreme Court called for in *Loper Bright*. No congressional approval has been given for the government's interpretation of the law and the requirements around "diversity, equity, and inclusion," and the interpretation has not been conclusively settled by the courts.

In its decision, the Supreme Court ruled that courts, not executive agencies, should interpret laws and divine their meanings. The contractor certifications proposed here are not aligned with the plain text of their corresponding statutes but are policy-based interpretations that have differed between administrations, a significant divergence from the longstanding approach. In this way, the proposed new certification cuts against the *Loper Bright* standards established by the Supreme Court. In fact, multiple federal courts are reviewing some of the language that the Agencies propose to add prior to receiving a final judgment from federal courts of competent jurisdiction. In light of *Loper Bright*, the Agencies should, at a minimum, wait for the courts, potentially including the Supreme Court, to rule on relevant language before making changes to contractor certification. If the courts rule in favor of the administration's interpretation of the relevant statutes, then certifying to the statutes as opposed to an executive order would clearly have authoritative support and would automatically shift the obligations in alignment with the administration while providing the clarity needed by federal contractors.

The Supreme Court has also cautioned against agencies taking action that impact "major questions"[4] where the authority of the government concerns "vast 'economic and political significance'"[5] and where Congress was not clear in charging the agency with the interpretation of that law. There is, to our knowledge, no statute or legislative history of a statute that charges the Agencies issuing this regulation, OFPP, OMB, DOD, GSA, and NASA, with interpreting the applicable statutes. Prior to now, these Agencies have not taken such a stance and there is no evidence provided that these Agencies maintain expertise in these questions. Further, there is little that could have more national impact than questions concerning billions of dollars of federal government contracts. These contracts impact every sector of society and the economy in urban, suburban, and rural parts of every state and territory. The president has called on all federal agencies to review regulations and repeal or modify those that would run afoul of the

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[3] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

[4] West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022).

[5] Utility Air Regulatory Group v. Environmental Protection Agency, 573 U. S. 302 (2014); Food and Drug Administration v. Brown and Williamson Tobacco Corp., 529 U.S. 120 (2000).

Supreme Court cases governing "major questions."[6] This new regulatory approach seems to run counter to the goals of that executive order. Given that the certifications proposed here have such a significant economic and societal impact and given that there is no law charging the Agencies with making the interpretations of the law present in the proposed certifications, this new proposal implicates a "major question" to be decided by Congress, not a set of federal agencies.

For the reasons described here, APLU is concerned that this approach will set a problematic precedent for future administrations, potentially destabilizing the critical federal contracting process.

## IV. The proposed certification transitions from long-settled and widely understood requirements to administrative interpretations currently subject to litigation

Federal contractors have long certified to compliance with federal statute. This is appropriate and APLU respects the federal government's responsibility to ensure its contractors diligently follow federal law with taxpayer resources. This new regulatory proposal calls for certification to comply with the language of an executive order that does not have the force of law of a statute; is unsettled, currently under review by multiple courts; and can change markedly with evolving jurisprudence and the policy goals of future administrations.

APLU member institutions must comply with federal prohibitions on discrimination regardless of federal contractor certification. They are bound by the federal and applicable state constitutions, and all separately agree to comply with all federal laws as a condition of receiving federal funds through a Program Participation Agreement[7] with the United States Department of Education. To the extent that the new certification requirements are reflective of federal law, contractors already certify that they will follow those laws. There is no need to implement new and heightened requirements for interpretations of such laws.

This new certification will require each contractor to closely track litigation in their circuit, the circuit of any sub-contractors, and nationally to understand the state of the law regarding the Agencies' interpretations both before and after they so agree. Creating a system where, for the first time in history, all federal contractors will have to continually and closely track litigation standards nationally and in each federal circuit court will add significant cost to contractors financially and in time spent. Whether immediately or over time, this additional cost to be borne by contractors of all types will lead to rising costs – stressing state and federal taxpayer resources, and in the case of public universities, divert resources that should otherwise be devoted to education, research, and community engagement.

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[6] https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/.

[7] https://studentaid.gov/sites/default/files/ppa/exemplar-full-certification-ppa.pdf.

Further, court decisions may lead the government to have to make emergency modifications to federal contracts for the entire nation or, in certain cases, only for contractors in a state covered by a ruling circuit court. This will be complicated and expensive for the federal government and may also lead to information technology challenges as the Agencies make emergency updates, leading to technical issues for the Agencies and a need for more technical assistance for contractors. Such a regime may also mean that, after a court decision, contractors will have to reach out to multiple agencies to modify their certification. The new regulatory approach may run afoul of the president's executive order "Reducing Anti-Competitive Regulatory Barriers, since it will, among other things, "unnecessarily burden the agency's procurement processes, thereby limiting [federal contractors'] ability to compete for procurements."[8]

## V. The GSA's time burden estimates are highly inaccurate for public and land-grant universities

Each APLU member institution annually spends considerable time reviewing and submitting certifications for federal contracts and working with sub-contractors on all aspects of compliance with federal standards. The Agencies estimate about 1.17 hours per contract certification. This is a significant underestimation of the burden. While the technical obligations of the certification itself may not take long, APLU member institutions are not satisfied with simply "checking the box." These institutions take their certification obligations seriously. They are long-term actors with deep ties to federal agencies and a thorough respect for the law and legal requirements. To that end, in addition to the time spent filling out the form, each institution will call in legal and compliance professionals and review ongoing and new policies and processes. This is further complicated by the need to do so not just for their own complex institutions but for all sub-contractors on the federal contract.

If the professionals at these institutions were certifying compliance to a statute, regulation, or long-settled legal concept, this might not take as much time. In fact, that has been the case for such federal contracts for decades. As described above, this certification, however, pledges compliance to a vaguely defined concept that cannot be found in statute or regulation and has not been clearly defined by the courts. In fact, the administration is currently litigating the concepts underpinning the executive order, and this certification. Therefore, APLU member institutions and all other federal contractors will have to steadily monitor court dockets across the country and may have to change their certifications in the middle of a contract due to an injunction or final court order.

Many of the sub-contractors that prime contractors, including APLU member institutions, work with are much smaller. They have fewer resources to expend on legal and compliance obligations, but their interest in serving our nation is just as strong. For many sub-contractors, this obligation, and the requirement that they track litigation and respond to prime contractors on litigation changes may be more costly than the margin they make in doing the work.

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[8] https://www.whitehouse.gov/presidential-actions/2025/04/reducing-anti-competitive-regulatory-barriers/.

Therefore, it may mean that some able and patriotic sub-contractors must decline to participate in a federal contract due to the additional costs brought on by this new regulatory approach.

The time burden here, being a significant undercount of the effort required for each contract by APLU member institutions and other contractors, is questionable to support this certification requirement under the standards of the Administrative Procedure Act.

**VI. Closing**

Public and land-grant universities take their longstanding partnership with the federal government as an immense honor and responsibility. APLU institutions carefully steward their federal contractors in service of the nation, certifying multiple times and in different ways their compliance with the Constitution, federal laws, and certain risk management and accounting principles. The language of these certifications have been based on settled law and maintained stability across administrations, guarding against constant political swings in the questions.

For the reasons noted above, we believe the proposed new certification questions violate the Paperwork Reduction Act, set a problematic precedent for future administrations, move away from reference to settled requirements towards unsettled interpretations, and are based on proposed time burdens that are highly inaccurate for public and land-grant universities.

APLU is prepared to engage further with the Agencies to discuss how to ensure certification to the Constitution and settled law while keeping government certification forms consistent in a manner we believe furthers the interests of all parties. The Association is eager to be a resource as you consider comments and possible changes.

Thank you for the opportunity to provide comments on this proposal.

Sincerely,

Waded Cruzado
President, APLU