



March 23, 2026

Elizabeth F. DelNegro
Associate Chief Information Officer
Technology Transformation Services
General Services Administration
1800 F Street, NW
Washington, District of Columbia 20405
By: Electronic Submission to Regulations.gov

Re: 3090-0290, System for Award Management Registration Requirements for Financial Assistance Recipients

Dear Associate Chief Information Officer DelNegro,

On behalf of the Association of Public and Land-grant Universities (APLU), we appreciate the opportunity to provide feedback on the System for Award Management (SAM) Registration Requirements for Financial Assistance Recipients.

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, APLU's 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 and its members are well-acquainted with the SAM.gov submission system. Public and land-grant universities engage in billions of dollars of sponsored research and register annually through this system to partner with the federal government in a myriad of ways to advance the national interest, including research that saves lives through the development of lifesaving treatments, advances innovation through world-changing inventions, and bolsters U.S. national security through breakthroughs that enhance our troops' effectiveness.

APLU appreciates the responsibility of the federal government to ensure the proper stewardship of precious taxpayer dollars, which should be subject to controls and legal standards. To date, the questions associated with SAM have always made reference to federal statutes and agency guidance tied to the accurate and responsible expenditure of funds¹ and representative of long-settled law, accounting, and risk management protections, not interpretations that are not settled law. The proposed wide deviation from longstanding standards presents complications that will ultimately substantially drive-up compliance costs and administrative spending, while limiting partners of the federal government who can best accomplish work in the furtherance of national interests.

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

1. The proposed new questions violate the Paperwork Reduction Act;
2. The GSA's approach sets a bad public policy standard that will likely result in extreme policy swings for future administrations;
3. The new proposed questions transition from settled law to unsettled administrative interpretation resulting in massive compliance uncertainty and costs; and
4. The GSA's proposed time burdens are highly inaccurate for the anticipated burden of public and land-grant universities.

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

II. The proposed new questions are 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),”² 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

¹ 1 System for Award Management (SAM) Registration Checklist, <https://sam.gov/sites/default/files/2024-11/entity-checklist.pdf>.

² 44 U.S.C. §3506(c)(3).

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...”³

In its proposed regulation, the GSA has provided no evidence that the new questions are “necessary for the proper performance” of the GSA. There is nothing in statute that would lead to a declaration of necessity of this information for the GSA and nothing that would show that current question (6) does not already meet that agency necessity.

Additionally, the proposed new questions are duplicative of longstanding question (6) which, by asking for certification of compliance with the Constitution and all federal laws is more comprehensive than new proposed questions (6), (7), and (8).

Further, as described in Section V, below, the proposed new questions do not reduce the burden of completing the SAM, but increase it significantly, both in the detail of what must be responded to, in the requirement to certify compliance with vague standards that are not based on settled law, and with the additional complications of having to certify to vague standards for sub-awardees as well. As the GSA notes in its proposal, the anticipated burden of the new questions rises not just for recipients, but also the federal government.

Additionally, there are no differing standards proposed to account for smaller or less sophisticated recipients. There are no published efforts to clarify, consolidate, or simplify the reporting requirements for some or all recipients. The proposal does not include any language to exempt certain recipients, such as federal fund recipient colleges and universities that already certify compliance with federal law in the Department of Education’s Program Participation Agreement.

Moreover, as further described in APLU’s comment letter below, the proposed new questions (6) (7), and (8) are not “written using plain, coherent, and unambiguous terminology...understandable to those who are to respond.” Given that the questions transition from the longstanding approach of plain reference to settled law to sub-regulatory interpretations not found in constitutional or statutory language and, given that some language is vague and/or subject to multiple interpretations, the proposed new questions do not advance the statutory goal of “plain, coherent, and unambiguous” language. In fact, the proposal moves to questions that are complex and ambiguous.

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 SAM has been generally consistent for many years, with changes around the margins, traditionally calling for certification to settled law as well as standard accounting and risk management principles. The proposed new questions are not “consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond.” The new proposed approach meaningfully diverges from the

³ 44 U.S.C. §3506(c)(3)(A)-(E).

standard and consistent questions 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.

III. The proposed new questions set a precedent for future administrations to include unsettled policy-based interpretations making recipient participation more difficult and the process less efficient

As noted earlier, historically, the hundreds of questions that are asked of any financial recipient in the SAM as well as its predecessors are tailored to financial and organizational responsibility to appropriately steward precious federal funds and/or are tied to the Constitution, enacted statutes, or promulgated regulations.

If the GSA adds to the SAM the questions proposed, it will set a precedent for future administrations of different political parties to modify the newly issued questions and to add their own set of questions and 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, will lead to less ability to track responses longitudinally with longstanding questions, and will deeply unsettle the federal funding system as organizations may be unable or unwilling to certify to the interpretive statements of one government or the other. This will disrupt recipients and hamper the goal of federal funding—to engage recipients that can efficiently and cost-effectively meet the strategic imperatives of the United States.

If these questions are finalized in this form, there is little to stop a future administration of another political viewpoint from deleting the questions and returning to the status quo ante, or from adding new and different questions and certifications that the current administration would find unacceptable. This could give rise to a movement from standard questions 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 proposed certifications as inconsistent with their state laws, a future president of a different political party may include certifications that recipients in other states find incompatible. The result will be additional costs for the federal government, litigation over language, and costs and complications for funding recipients. Eventually, as the different question paths calcify by administration, recipients 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 questions palatable or not. This is not a value judgment on the 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* 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 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.⁴ In the decision, the Supreme Court ruled that courts, not agencies, should interpret laws and divine their meanings. The newly proposed questions are not aligned with the plain text of their corresponding statutes but are policy-based interpretations that have differed between administrations. The proposed questions are a significant departure from the longstanding approach of asking questions based only on settled law and reference to the Constitution and statutes. In this way, the proposed new questions cut against the standards established by the Court. In fact, multiple federal courts are reviewing some of the language that the GSA proposes to add. In light of *Loper Bright*, the GSA should, at a minimum, wait for the courts, potentially including the Supreme Court, to rule on relevant language before making changes.

The Court has also cautioned against agencies taking action that impact “major questions”⁵ where the authority of the government concerns “vast ‘economic and political significance’”⁶ 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 General Services Administration with interpreting the law governing discrimination, immigration, or terrorism and national security threats. Further, there is little that could have more national impact than questions concerning billions of dollars of federal government investment. These funds impact every sector of society and the economy in urban, suburban, and rural parts of every state and territory. Given that the questions of the SAM have such a significant economic and societal impact, and given that there is no law charging the GSA with making the interpretations of the law present in the proposed new questions (6), (7), and (8), the proposed questions likely implicate a “major question” to be decided by Congress, not an agency.

IV. The proposed new questions transition from long-settled and widely understood requirements to administrative interpretations currently subject to litigation

The SAM disclosures have long included content that substantively addresses, through certification to settled federal legal principles, compliance with relevant federal law. The

⁴ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

⁵ *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022).

⁶ *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).

proposed additional language⁷ moves from certification of broad federal requirements to narrower certification to specific administrative interpretations that are less settled and can change markedly with evolving jurisprudence and the policy goals of future administrations.

The Financial Assistance General Certifications and Representations section of the SAM disclosure currently includes 16 questions, some with multiple sub-questions, that address compliance with all federal laws and directives. Specifically, the current questions seek certification of broad compliance with “the U.S. Constitution, all federal laws, and relevant Executive guidance” and “federal laws, executive orders, regulations, and public policies.” These questions reference specific requirements as examples, without deviation or administrative interpretation. Since the questions are narrowly drawn to the Constitution, statute, and regulation, they stand the test of time, covering federal funding in administrations of different political parties and with Congress controlled by one party, the other, or a split control. The examples in the SAM are not exclusive but are exemplary, and recipients certify compliance with those laws and all others.

The new proposed questions take a different approach. They concentrate on anti-discrimination, immigration, and public safety law, but rather than simply make reference to published and long-settled requirements, make reference to unsettled administrative interpretations and non-binding Department of Justice guidance documents. In fact, the referenced Department of Justice guidance specifically states, “this guidance identifies ‘Best Practices’ as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls; these are not mandatory requirements but rather practical recommendations to minimize the risk of violations.”⁸

APLU members must comply with federal prohibitions on discrimination regardless of SAM certification. They are bound by the federal and their state’s constitution, and all agree to comply with all federal laws as a condition of receiving federal funds through a Program Participation Agreement⁹ with the United States Department of Education.

The three proposed new questions do not simply refer to legal requirements but go well beyond, including policy-based interpretations of statutes and the Constitution that are not found in settled law. To the extent that these policy interpretations are reflective of the state of the law, they are fully covered by longstanding SAM question (6) asking recipients to certify that they “[w]ill comply with all applicable requirements of all...federal laws, executive orders, regulations” and including a list that is illustrative but not exclusionary, using the phrase, “including but not limited to.” If an action is discriminatory under federal law, recipients certify that they will not take that action under current (6). If an action will assist illegally or in reckless disregard of federal immigration law, recipients certify that they will not take that action under current (6). If an action illegally aids terrorism or violence threatening safety or national security, recipients certify that they will not take that action under current (6). The constitutional and statutory lattice underpinning each concept queried in the new language

is fully covered by the universal certification including but not limited to published examples, already required by question (6).

Unlike the longstanding questions that are written in brief, focused language and based on settled law, risk management requirements, and standard accounting principles, the proposed new questions (6), (7), and (8) use expansive, vague language that is open to multiple interpretations, and some of which is the current subject of litigation. The GSA acknowledges the uncertainty of the new interpretations, which explains the new language appearing for the first time in SAM's history in these new proposed questions:

“To the extent that any [of] 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. All other certifications and representations not directly affected by such order shall remain in full force and effect.”

The new language will require each recipient to closely track litigation in their circuit, the circuit of any sub-awardees, and nationally to understand the state of the law regarding the agency's interpretation both before and after they fill out the SAM. Creating a system where, for the first time in history, hundreds of thousands of recipients will have to continually and closely track litigation standards nationally and in each federal circuit court to determine which questions to answer and which to skip will add significant cost to recipients financially and in time spent.

Further, court decisions will lead the government to have to make emergency modifications to the SAM for the entire nation or, in certain cases, only for recipients in a state covered by a circuit court or for a specific class of plaintiffs. This will be complicated and expensive for the federal government as it may require the GSA to maintain multiple different SAM systems for different parts of the country. Categorizing recipients in one or another system may require manual work as some recipients are located in multiple circuits. It may also lead to information technology challenges as the agency makes emergency updates, leading to technical issues for the agency and a need for more technical assistance for recipients. Such a regime may also mean that, after a court decision, recipients will have to reach out to SAM to modify their submission. In the history of SAM and its predecessors, there has never been cause for recipients to track litigation nationally or locally to determine how to answer the published questions or whether to engage GSA to make changes to their submission.

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

Each APLU member annually spends considerable time reviewing and submitting hundreds of SAM certifications, some in multiple parts and referring to varied sections

of law and regulation.⁷ This is important, legally and reputationally, and accuracy in submissions to the federal government is critical. But, submission comes with a cost. Institutions employ staff to prepare, review, and submit this material, and that is before any of the actual work with federal funds is completed. The current burden of the form is significant and, as noted above in Section III, federal law requires that the government take care before adding to that burden beyond what is required to appropriately expend taxpayer funds. The estimated 2.75 hours of effort to update these proposed new questions is, for APLU institutions, highly inaccurate as all will have to expend far more time to ensure compliance.

Even assuming just 2.75 hours per response, the GSA estimates millions of dollars in cost to the 222,760 recipients and millions more in cost to the federal government for review. The proposal will also add unstated costs to the federal government to update its systems, potentially multiple times due to judicial decisions. The added questions (6), (7), and (8) are complex, multi-part, vague, and subject to interpretations. Because they are so vague, APLU institutions and other large, complex recipients will have to spend countless hours to check every corner of their program against current legal interpretations with attorneys reviewing for compliance based on unclear standards.

Further, as the GSA acknowledges, multiple courts are currently reviewing the legality of the language proposed to be added to the SAM. This will require APLU institutions and other recipients to continuously track decisions in district and circuit courts as well as the Supreme Court. Tracking, reviewing, and interpreting fast-moving court cases adds cost and effort to each institution, mostly in legal review and analysis. This may also require that APLU institutions and other recipients amend or change SAM responses based on court decisions issued after their submission. Rescinding or amending submissions adds costs for recipients and the government, both at the GSA and at funding agencies.

Further, many grants include not just a prime recipient but one or multiple sub-awardees that together accomplish the goals of the federal award. In fact, some federal grants require that a prime recipient partner with one or more sub-awardees (e.g. Department of Justice grants that are awarded to colleges and universities). In such cases, a prime recipient must not just certify for itself but must as a pass-through certify for all sub-recipients. This has long been a requirement and, given the standard set of SAM questions based on settled law and risk management or accounting requirements, has been a step that sub-recipients can certify with confidence and that prime recipients can accept with confidence.

Given the less settled nature of the language in the proposed new questions, the complexities of understanding and responding accurately, and the vagueness of the language, it will both be more complicated for small sub-recipients to track and certify and riskier for prime recipients to trust the certifications without expending additional effort and funds to review. For even one federal award, this will far exceed the 2.75

⁷ System for Award Management Entity Registration Checklist, https://www.fsd.gov/sys_attachment.do?sys_id=82f480491b4dfd142fe5ed7ae54bcb0c.

hour estimate. Further, the new and less settled language may reduce the pool of sub-awardees willing to engage in that complicated and expensive process for what will amount to a small sub-award. This will result in reduced output for the United States as the relationship between the federal government awarding agencies, prime awardees, and sub-awardees has been important in meeting myriad federal goals.

VI. Closing

Public and land-grant universities take their longstanding partnership with the federal government as an immense honor and responsibility. APLU institutions carefully fill out the SAM forms and support the requirement that they certify compliance with the Constitution, federal laws, and risk management and accounting principles. The longstanding questions of the SAM and its predecessors represent settled law and maintain stability across administrations guarding against constant political swings in the questions. For the reasons noted above, we believe the proposed new questions violate the Paperwork Reduction Act, set a bad precedent for future administrations, moves away from reference to settled requirements towards unsettled interpretations, and proposes time burdens that are highly inaccurate for public and land-grant universities.

APLU is prepared to engage further with GSA to discuss how to obtain important, useful data while keeping the form consistent and tied to settled law 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,

A handwritten signature in black ink, appearing to read "Waded Cruzado". The signature is fluid and cursive, with the first name being more prominent.

Waded Cruzado
President
Association of Public and Land-grant Universities