

## Specific Terms and Conditions For the **American Rescue Plan Grants to Local Arts Agencies**

American Rescue Plan (ARP) funds are to support eligible organizations and jobs in the arts sector that have been impacted by the Coronavirus pandemic.

These Specific Terms and Conditions apply to Local Arts Agencies (LAAs) that are designated to operate on behalf of their local governments or are an operating unit of city or county government that are eligible to make subawards or subgrants under the National Endowment for the Arts (or Arts Endowment) opportunity “American Rescue Plan Grants to Local Arts Agencies for Subgranting.”

As a companion to the National Endowment for the Arts’ *General Terms and Conditions for Grants and Cooperative Agreements to Organizations* (General Terms and Conditions, or GTCs), these Specific Terms and Conditions address requirements that apply to both:

- The LAA in its role as a subgrantor of Federal ARP funds and
- The subrecipient entities who receive such awards.

This summary is provided to assist you in understanding your requirements as a pass-through entity, but does not relieve you of your responsibilities to read and follow 2 CFR 200, as well as 2 CFR 25, 2 CFR 170, 2 CFR 175, 2 CFR 180, 2 CFR 182, and 2 CFR 183.

**When using ARP Federal funds for a subaward,  
you must inform subrecipients that they must comply with these mandates.**

### 1. COST SHARE

ARP funds are non-matching. There is no cost share.

### 2. ALLOWABLE COSTS (Guidelines)

ARP funds support salaries, administration costs, and subgranting to the nonprofit arts sector in response to the COVID-19 pandemic. All costs must be allocable and allowable.

**LAAs may allocate up to \$50,000 of the funds for their own salaries and wages, fringe benefits, and operating expenses (e.g., rent, utilities, etc.) to manage and administer the ARP funds.**

- You must maintain records that accurately reflect the work performed by any employee whose salary is charged, in whole or in part, to the ARP funds.
- Personnel expenses must be documented using personnel activity reports, time and effort reports, or other records that comply with your organization’s internal controls and established accounting policies.

- Written and signed contracts must also be maintained if the grant and/or subgrant(s) supports contracts with artists or contractual personnel.

Per our legislation, only Local Arts Agencies (LAAs) that are designated to operate on behalf of their local governments or are an operating unit of city or county government are eligible to subgrant Arts Endowment funds.

Allowable costs for subgranted ARP funds are limited to:

- Salary support, full or partial, for one or more staff positions.
- Fees/stipends for artists and/or contractual personnel to support the services they provide for specific activities in support of the subgrantee organization's day to day operations.
- Facilities costs such as rent and utilities.
- Costs associated with health and safety supplies for staff and/or visitors/audiences (e.g., personal protective equipment, cleaning supplies, hand sanitizer, etc.).
- Indirect costs.
- Marketing and promotion costs.

**Your organization, as the pass-through entity, must ensure that subgranted ARP funds are used to cover only these specific cost items.**

If your organization is allowed to make direct awards to individuals, subgrants may be awarded to individuals for artist fees/stipends to support the services they provide for specific programs and activities. See section 6 (C) below for additional information.

All allocable and allowable expenses, yours and your subrecipients, must be adequately documented in compliance with 2 CFR 200 (which applies to ARP as it does to all Federal awards).

As a reminder, you, as the prime recipient, and any subgrantees may not claim more than 100% of salary with funding provided by other Federal agencies such as the Small Business Administration, the National Endowment for the Humanities, etc.

### **3. UNALLOWABLE COSTS (Guidelines, 2 CFR 200, NEA Enabling Legislation)**

ARP funds cannot be used for:

- "Artist relief" programs where the funding is intended to alleviate financial hardship (i.e., rent or food assistance to individuals) and does not require the artist to undertake work.
- Alcoholic beverages.
- Commercial (for-profit) enterprises or activities, including concessions, food, clothing, artwork, or other items for resale. This includes online or virtual sales/shops.

- Construction, purchase, or renovation of facilities.
- General fundraising.
- General miscellaneous or contingency costs.
- Land purchase costs.
- Lobbying, including activities intended to influence the outcome of elections or influence government officials regarding pending legislation, either directly or through specific lobbying appeals to the public.
- Mortgage interest, fines and penalties, bad debt costs, or deficit reduction.
- Rental costs for home office workspace owned by individuals or entities affiliated with the applicant organization.
- Social activities such as receptions, parties, or galas.
- Subawards to replace lost revenue.
- Travel costs.
- Vehicles purchases.
- Visa costs paid to the U.S. government.
- Voter registration drives and related activities.
- Costs supported by any other federal funding. This includes federal funding received either directly from a federal agency or indirectly from a pass-through organization such as a state arts agency, regional arts organization, or a grant made to another entity.
- Expenditures related to compensation to foreign nationals when those expenditures are not in compliance with regulations issued by the U.S. Treasury Department Office of Foreign Assets Control. For further information, see <https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx>.
- All other costs that are unallowable per 2 CFR 200 and other laws.

#### **4. SUBAWARDING FEDERAL FUNDS AS FURTHER DEFINED BY THE NEA'S LEGISLATION (P.L. 108-108, Section 309 (2), Nov. 10, 2003)**

A subgrant is an award made by you (the NEA grantee) to another eligible organization. As a grantee of the NEA, your agency is termed the "prime" or "direct" recipient.

When you, the prime recipient, make subawards as part of your NEA award, you are considered a "pass-through" entity per the definition provided at 2 CFR Part 200 Subpart A "Acronyms and Definitions," and

you must comply with the requirements for monitoring and management of all subrecipients who receive subawards comprised of federal ARP funds.

- A subaward exists when funds are re-awarded to an eligible non-federal entity for activities conducted independently of the direct award recipient for the benefit of the subrecipient's program objectives.
- A subrecipient is neither directly employed by nor affiliated with the direct award recipient.
- A subaward relationship *could* exist even if you call the grant agreement a contract.

**NOTE:** If subawards are made for *further* subawarding activity that subrecipient becomes a pass-through entity as defined by 2 CFR Part 200 and must comply with all the provisions included here. **Only State Arts Agencies, Regional Arts Organizations, and designated LAAs are eligible to subgrant NEA funds at any level. No other entities may subgrant NEA funds.**

**5. ADDITIONAL DEFINITIONS (2 CFR 200 or the NEA)**

In addition to the definitions provided in the GTCs, select items pertaining to subawards are summarized below.

Term	Citation	Definition
Federal share	2 CFR 200	The portion of the award's costs, including administrative or programmatic subaward costs, that are paid by federal funds.
Pass-through entity	2 CFR 200	A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.  <b>NOTE:</b> This includes all LAAs who issue subawards using NEA ARP funds.
Recipient cost share or match	NEA Guidelines, P.L. 108-108, Nov. 10, 2003 Arts Endowment GTCs	Non-federal funds that are used to support additional costs for the project.  <b>The NEA ARP awards are non-matching. They do not require cost share.</b>
Subaward	2 CFR 200	An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out a project or activity identified as part of a federal award.  A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
Subrecipient	2 CFR 200	A non-federal entity that receives a subaward from a pass-through entity to carry out a project or activity identified with the federal program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.  <b>NOTE:</b> as a Local Arts Agency, your awardees are "subrecipients."

## 6. REQUIREMENTS FOR PASS-THROUGH ENTITIES (2 CFR 200.332)

The NEA's enabling legislation, the Uniform Administrative Requirements (2 CFR Part 200), and the American Rescue Plan guidelines include requirements for subawards that are made under a federal award.

- You must abide by, or implement, all of the items below if you are making subawards with NEA funds.
- **Only SAAs, RAO, and designated LAAs are considered subrecipients eligible to subgrant NEA funds at any level. No other entities may subgrant NEA funds.**
- Any subrecipients who make further subawards using NEA funds must also comply with these requirements.

It is very important that certain items are included in your subaward program guidelines (e.g., the announcement or notice of a funding opportunity) so that potential applicants understand the requirements and are prepared to comply if they are selected for a subaward.

To make subawards, you may determine the method that allows for the fullest compliance with the requirements outlined below.

- (A) NOTICE OF FUNDING OPPORTUNITY (e.g., your agency's subaward program guidelines). Your guidelines must include flow-down federal regulations and policy requirements so that potential applicants understand and are prepared to comply if they are selected for a subaward. See **APPENDIX C** of this document for information regarding regulations, Executive Orders, and national policy requirements that are applicable to all federal awards. These include requirements that prohibit discrimination, ensure accessibility of all facilities and programs funded with federal monies, provide for the protection of environmental and historic resources, and more.

The NEA does not prescribe how federal/cost sharing/matching funds must be allocated. For example, you may choose larger amounts to apply a small number of subawards or spread smaller amounts more widely. You determine the method that allows for the fullest compliance with the requirements outlined below.

- (B) REVIEW CRITERIA. In accordance with the NEA's enabling legislation, you **must** include "artistic excellence" and "artistic merit" in the review criteria used to make subawards (20 USC Sec. 951 et seq.).
- (C) ELIGIBLE SUBRECIPIENTS.
- **Organizations.**  
Only 501(c)(3) nonprofit organizations, units of state or local government, institutions of higher education, or federally-recognized Indian tribal governments are eligible to receive funds subawarded through an NEA award (20 USC Sec 954 (f)).

**NOTICE: FOR-PROFIT ENTITIES AND FISCAL SPONSORS ARE NOT ELIGIBLE SUBRECIPIENTS.**

o **Individuals.**

If your agency is permitted to make awards to individuals, you may allocate ARP funds to those qualified individuals. Support to individual artists may be allowable if the subaward is not a one-time monetary recognition award. Subawards to individuals must support specific activities or work such as presentations, training, research, and/or creation of an artwork, with tangible outcomes required by the subaward. This is considered a stipend to the artist for the work undertaken and completed.

Because ARP federal funds cannot support a subaward to an individual made solely as an honorific with no required activities, costs for this type of award program must not be included in the budget, financial, and other reports for the NEA ARP award.

(D) UNIQUE ENTITY IDENTIFIER (UEI).

You may not make a subaward with federal funds to an eligible organization (entity) without a unique entity identifier, which is currently a DUNS number. You must notify potential subrecipients that they cannot receive a subaward from you unless they provide a valid UEI.

- Individuals receiving subawards do not need to have a UEI/DUNS (2 CFR 25.110(b)).

All of your subawards must include the award term in **APPENDIX B** at the end of this document regarding the System for Award Management and Universal Identifier Requirements (2 CFR 25 Appendix A).

**ATTENTION:** In April 2022, the federal government will transition away from the use of the DUNS Number and toward the new SAM.gov Unique Entity ID as the primary means of entity identification for federal awards government-wide. For more information regarding the transition to the SAM UEI visit the Federal Service Desk's Help for the Transition from UEI (DUNS) to UEI (SAM) at [www.fsd.gov/gsafsd\\_sp?id=gsafsd\\_kb\\_articles&sys\\_id=65cab50c87b4da10ccb70f270cbb357d](http://www.fsd.gov/gsafsd_sp?id=gsafsd_kb_articles&sys_id=65cab50c87b4da10ccb70f270cbb357d).

What does this mean to you as the pass-through entity?

Starting in October 2021, potential subawardee organizations may request a UEI in SAM.gov. Subawardees are not required to have a full SAM.gov registration.

- Subawardees will continue to use their DUNS UEI for reporting until April 4, 2022.
- On or after April 4, 2022, subawardees will only use their SAM UEI for reporting.

(E) REVIEW OF RISK.

You must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward and consider imposing specific subaward conditions, if appropriate (2 CFR 200.332(b), (c), and (e)).

You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR 180, as adopted by the NEA in 2 CFR 32.3254.

To comply with this requirement, you must verify that the organization/person with whom you intend to do business is not excluded or disqualified from doing business with the federal government.

**NOTE: you may meet this requirement by requiring your subrecipients to complete a self-certification that participants in the subaward are not disbarred, suspended, or have any other exclusions or disqualifications**

(F) ACCEPTANCE OF FEDERALLY-RECOGNIZED INDIRECT COST RATES.

Unless you have noted otherwise in your notice of funding opportunity (e.g., guidelines), you must:

- Accept an approved indirect cost rate negotiated between the subrecipient and the federal Government (2 CFR 200.332(a)(4)).
- If no such rate exists, you can negotiate your own rate with the subrecipient in compliance with this part, or accept a **de minimis indirect cost rate** of up to 10% of modified total direct costs (2 CFR 200.414(f)).
- You may also accept a de minimis rate if the subrecipient's federally-negotiated rate is expired.

**NOTE:** The reasons for the disallowance of indirect costs must be based on a legislative requirement or because the publicly available notice of funding opportunity is restricted to direct costs only (e.g. artist fees), not the pass-through entity's preference.

(G) IDENTIFICATION OF FEDERAL OR COST SHARE/MATCHING FUNDS.

You must identify to the subrecipient if the subaward is comprised, in whole or in part, of federal funds or funds that are used to meet the minimum required match for a federal award. **Note: ARP funds do not require a cost share/match.**

You must also identify the federal awarding agency and provide other required information as outlined in **APPENDIX A**.

2 CFR 200.332 requires that this information is conveyed,

- At the time the subaward is made,
- When/if any of these data elements change, including in any subsequent subaward modification(s).

If this information is not available at the time the subaward is made, you must provide the best information available to describe the federal award and subaward and provide updates to the subrecipient as necessary upon the receipt or disbursement of federal or cost share/matching funds (2 CFR 200.332 (a)).

(H) SUBRECIPIENT REPORTING.

You may impose additional requirements on the subrecipient to meet your own responsibility to us, including any required financial and performance reports.

You must also keep subrecipients' report submissions on file for three (3) years after the date you submit your Federal Financial Report to the NEA (2 CFR 200.331 (a)(3)).

(I) REPORTING TO THE FEDERAL SUBRECIPIENT REPORTING SYSTEM (FSRS).

As required by the Federal Funding Accountability and Transparency Act (FFATA), you must report any subawards that include **\$30,000 or more in Federal funds** to FSRS at [www.fsrs.gov](http://www.fsrs.gov) by the end of the month after the subaward is made (2 CFR 170; 85 FR 49526, Aug. 13, 2020).

See the National Endowment for the Arts' FFATA FAQs available on our website [www.arts.gov](http://www.arts.gov).

(J) MONITORING.

You must monitor the activities of your subrecipient(s) as necessary to ensure that subawards are used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved (2 CFR 200.332(d-h)).

This includes the review of financial and performance reports from your subrecipients.

(K) TERMS AND CONDITIONS.

You must provide subrecipients with Terms and Conditions for their subaward that outline all requirements for managing their subaward.

These Terms and Conditions must include or reference all of the Federal requirements that "flow down" to the subaward (see **APPENDIX C**), instructions for submitting performance and financial reports required by your agency, information relating to the closeout of the subaward, and record retention, among others.

The NEA strongly recommends including information about these requirements in the notice of funding opportunity (guidelines) so that potential applicants are aware of and prepared to comply with these requirements.

(L) RECORD RETENTION AND ACCESS.

You must inform subrecipients that they must permit you and your financial auditors access to their records and financial statements as necessary for you to ensure compliance with the federal award requirements (2 CFR 200.332 (a)(5), .334 and .337).

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report to the Federal awarding agency (2 CFR 200.334).

This means that you, as the prime recipient, must retain all records pertinent to your federal award for a period of three (3) years from the date that you submit the final Federal Financial Report (FFR) to us. Your subrecipients must retain their records in a manner that allows you, as the prime recipient, to comply with this requirement



**(M) CLOSEOUT.**

All subawards made with federal and/or required cost-share/matching funds must be closed out (including submission and approval of all subrecipient final reports and disbursement of all federal and cost share/matching funds) **prior to** closing out your federal award (2 CFR 200.332(a)(6) and .344(a)).

- If you provide an extension to allow a subrecipient more time to complete the activities for which the subaward was made, you may need to request the period of performance for your federal award be extended accordingly (2 CFR 200.344(a)).
- Review 2 CFR 200.344 for additional closeout actions and requirements.
- If your subrecipient drew down ARP funds and did not use them, or used them for unauthorized/unallowable costs or activities, they must return those funds to your organization. If you do not re-grant those funds to another eligible organization for eligible ARP costs, you must return the funds to the NEA. Follow the instructions in the *How to Manage Your National Endowment for the Arts Award and eGMS Reach Handbook*.

**7. FINAL REPORTING REQUIREMENTS**

As the direct recipient of the Federal award, you must submit your final reports within 120 days after the end date for the Federal period of performance. These required reports and instructions are on the Forms & Reports Tab of your award record in REACH. The final reports include:

- FY22 Final Descriptive Report – ARP LAA Subgranting:
  - Narrative and data regarding your award.
- Federal Financial Report:
  - Report on the actual allocable and allowable expenditures for the award
- Local Arts Agency Subgrant Report
  - Report on the geographic location and numbers of individuals benefited for you and your subawardees.

Note: Subrecipients must submit their required final reports to you no later than 90 days from the end of the period of performance for the subaward.

## **APPENDIX A: Required Data Elements for Subaward Notices under 2 CFR 200.332**

Pass-through entities are required to provide subrecipients with the following information any time a subaward is made with federal ARP funds. You do not need to provide this information in any particular order or format; the important thing is that the subrecipient is aware of the federal source of funding and informed of the applicable award requirements. You must also ensure that all subawards to which federal funds are obligated are in compliance with all other Terms and Conditions for the NEA award.

Although these are the data elements required for making subawards, you may also have other data elements and information that you provide to them based on your own policies and procedures.

(1) In the case of subawards made only partially with federal funds, your award notification should reflect the total amount awarded to the subrecipient, and then identify the federal portion as required below.

**\*\* NOTE:** For items (vii), (viii) and (ix) in the table below, if you have not determined the allocation of Federal/matching funds at the time the subaward is made, you must make provisions to convey this information to the subrecipient at the time that Federal or matching funds are obligated to their subaward.

Also, if these three data elements are all the same (e.g. you are obligating all Federal funds at one time), you can simply report (ix), "Total Amount of the Federal Award."

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. (2 CFR 200.332 (a))

<b>2 CFR 200.332</b>	<b>SAMPLE RESPONSE</b>	<b>NOTES</b>
(i) Subrecipient name (which must match the name associated with its unique entity identifier)	<i>Dance Council of Birmingham</i>	Legal name of the subrecipient; must match the entity's name in their D&B record (until April 4, 2022) and their SAM.gov UEI record (on/after April 4, 2022.)
(ii) Subrecipient's unique entity identifier (UEI)	<b><i>Until April 4, 2022:</i></b> <i>Subrecipient's DUNS UEI</i>  <b><i>On or after April 4, 2022:</i></b> <i>Subrecipient's SAM UEI</i>	The subrecipient's UEI; must reflect legal name and current address.
(iii) Federal Award Identification Number (FAIN)	<i>xxxxxxx-66-22</i>	The NEA award number as included on the LAA's Arts Endowment award document.
(iv) Federal Award Date of award to the recipient by the federal agency	<i>May 15, 2022</i>	The award date on the NEA's Official Notice of Action (NOA) for your Federal award.

2 CFR 200.332	SAMPLE RESPONSE	NOTES
(v) and (vi) Subaward Period of Performance and Budget Period	<i>July 1, 2022 - May 31, 2023</i>	The start and end dates for the subaward grant period during which expenses must be incurred; must be <u>within</u> the period of performance for the LAA's NEA award.
Total amount of subaward ( <b>non-federal and federal</b> , if applicable)	<i>\$15,000</i>	This is the total amount of the subaward to the subrecipient.
<b>The next three items are <i>usually</i> the same amount</b>		
(vii) Amount of federal funds obligated by this action by the pass-through entity to the subrecipient	<i>\$10,000</i>	This is the amount of federal funds obligated by you, if any, to the subrecipient for the subaward.
(viii) Total amount of federal funds obligated to the subrecipient by the pass-through entity including the current financial obligation	<i>\$10,000</i>	Usually the same amount as the row above, unless, as the pass-through, you amended the a previously awarded federal subaward with additional federal funds.
(ix) Total amount of the federal award committed to the subrecipient by the pass-through entity	<i>\$10,000</i>	Total amount of federal funds from your NEA grant that are included in the subaward.
(x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	<b><i>Purpose:</i></b> <i>To support subgranting to the nonprofit arts sector in response to and recovery from the COVID-19 pandemic.</i>	The project description included on the NEA's Official Notice of Action (NOA) for your federal award.
(xi) Name of federal awarding agency, pass-through entity, and contact information for awarding official	<ul style="list-style-type: none"> <li>• <i>National Endowment for the Arts</i></li> <li>• <i>Birmingham Arts Council</i></li> <li>• <i>John Doe, BAC Exec. Director</i></li> <li>• <i>555-333-5555</i></li> <li>• <i>email@BAC.gov</i></li> </ul>	The NEA's name, the LAA's name, and name and contact information for the person authorizing the subaward on the LAA's behalf.
(xii) Assistance Listings number and Title (previously the CFDA Number and Name); the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement.	<i>45.024 Promotion of the Arts - Grants to Organizations and Individuals</i>	The NEA's Assistance Listings number and title as provided on the Official Notice of Action for your NEA award.
(xiii) Identification of whether the federal award is Research & Development (R&D)	<i>Yes/No.</i>	Identify whether your NEA award supports Research & Development activities. This information is provided on the Official Notice of Action for your Arts Endowment award.  <b>For ARP awards, the answer is No.</b>

2 CFR 200.332	SAMPLE RESPONSE	NOTES
(xiv) Indirect cost rate <u>for the federal award</u> (including if the de minimis rate is charged per 2 CFR 200.414)		The indirect cost rate, if any, charged to the approved project budget for your NEA award.
(xv) Indirect cost rate <u>for the subaward</u> (including if the de minimis rate is charged per 2 CFR 200.414)	<i>The de minimis indirect cost rate is approved.</i>	The indirect cost rate you approve for the subaward, if any. See 3.6 for more detail.
All requirements imposed by the pass-through entity on the subrecipient so that the federal award is used in accordance with federal statutes, regulations and the terms and conditions of the federal award.		
Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the federal awarding agency including identification of any required financial and performance reports	<i>Your performance and final financial reports are due MM/DD/YYYY.</i>	Provide your subrecipients with a list of required final reports for the subaward and the deadline for receipt.  Subrecipients must submit their required final reports to you no later than 90 days from the end of the period of performance for the subaward.
A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part.		
Appropriate terms and conditions concerning closeout of the subaward.		

## **APPENDIX B: 2 CFR 25 Appendix A Award Term**

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### **I. System for Award Management and Universal Identifier Requirements**

#### **A. Requirement for System for Award Management**

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

#### **B. Requirement for Unique Entity Identifier**

If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.
2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

#### **C. Definitions**

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).
2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.
3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:
  - a. A foreign organization;
  - b. A foreign public entity;
  - c. A domestic for-profit organization; and
  - d. A Federal agency.
  - e. Subaward has the meaning given in 2 CFR 200.1.
  - f. Subrecipient has the meaning given in 2 CFR 200.1

## **APPENDIX C: National Policy and Other Legal Requirements, Statutes, and Regulations that Govern Your Award**

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You must ensure that the funded project is implemented in full accordance with the U.S. Constitution, federal Law, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination (2 CFR 200.300).

As a registrant with SAM.gov, in most cases, you have already self-certified to the “Financial Assistance General Certifications and Representations,” including attesting to the accuracy of the certification and acknowledging that you may be subjected to criminal prosecution under Section 1001, Title 18 USC, or civil liability under the False Claims Act if you have misrepresented the information. A copy of this Financial Assistance Certifications Report is available in your SAM.gov entity registration record.

### **1. Nondiscrimination Policies**

As a condition of receipt of Federal financial assistance, you acknowledge and agree to execute your project, and require any contractors, successors, transferees, and assignees to comply with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to:

- 1.a Title VI of the Civil Rights Act of 1964, as amended, and implemented by the National Endowment for the Arts at 45 USC 1110, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Title VI also extends protection to persons with limited English proficiency (42 USC 2000d et seq.)
- 1.b As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. You are encouraged to consider the need for language services for LEP persons in conducting your programs and activities..
- 1.c Title IX of the Education Amendments of 1972, as amended, provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance (20 USC 1681 et seq.)
- 1.d The Age Discrimination Act of 1975, as amended, provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (42 USC 6101 et seq.)
- 1.e The Americans with Disabilities Act of 1990 (ADA), as amended, prohibits discrimination on the basis of disability in employment (Title I); State and local government services (Title II); and places of public accommodation and commercial facilities (Title III) (42 USC 12101-12213).
- 1.f Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of his/her disability, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (29 USC 794).

Access should be integrated into all facets and activities of an organization, from day to day operations to long range goals and objectives. Access accommodations and services should be given a high priority and funds should be available for these services. All organizations are legally required to provide reasonable and necessary accommodations for staff and visitors with disabilities.

#### Section 504 - Self-Evaluation and Additional Resources

- i. A Section 504 self-evaluation *must* be on file at your organization. To help your organization evaluate its programs, activities, and facilities with regard to Section 504 accessibility requirements, the Civil Rights Office has a *Section 504 Self Evaluation Workbook* available on our website.
- ii. You should designate a staff member to serve as a 504 Coordinator. The completed workbook or similar compliance and supporting documentation should be kept on file for a period of three (3) years from the date the Federal Financial Report (FFR) is filed, and made available to the public and the National Endowment for the Arts upon request. The National Endowment for the Arts may request the 504 Workbook or your compliance documents for various potential scenarios including an Inspector General audit and/or civil rights investigation.
- iii. *Design for Accessibility: A Cultural Administrator's Handbook* provides guidance on making access an integral part of an organization's staffing, mission, budget, and programs. This Handbook and other resources may be downloaded from the National Endowment for the Arts website. If you have questions, contact the Office of Accessibility at [accessibility@arts.gov](mailto:accessibility@arts.gov); (202) 682-5532; fax (202) 682-5715; or TTY (202) 682-5496.

## 2. Environmental and Preservation Policies

2.a The National Environmental Policy Act of 1969, as amended, applies to any Federal funds that would support an activity that may have environmental implications. We may ask you to respond to specific questions or provide additional information in accordance with the Act. If there are environmental implications, we will determine whether a categorical exclusion may apply; to undertake an environmental assessment; or to issue a "finding of no significant impact," pursuant to applicable regulations and 42 USC Sec. 4332.

2.b The National Historic Preservation Act of 1966, as amended, applies to any Federal funds that support activities that have the potential to impact any structure eligible for or on the National Register of Historic Places, adjacent to a structure that is eligible for or on the National Register of Historic Places, or located in a historic district, in accordance with Section 106. This also applies to planning activities that may affect historic properties or districts. We will conduct a review of your project activities, as appropriate, to determine the impact of your project activities on the structure or any affected properties. Agency review must be completed prior to any agency funds being released. You may be asked to provide additional information on your project to ensure compliance with the Act at any time during your award period (16 USC 470).

## Other National Policies

3. Debarment and Suspension. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR Part 180, as adopted by the National Endowment for the Arts in 2 CFR 3254.10.

There are circumstances under which we may receive information concerning your fitness to carry out a project and administer Federal funds, such as:

- i. Conviction of, or a civil judgment for, the commission of fraud, embezzlement, theft, forgery, or making false statements;
- ii. Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
- iii. Any other cause of so serious or compelling a nature that it affects an organization's present responsibility.

In these circumstances, we may need to act quickly to protect the interest of the government by suspending your funding while we undertake an investigation of the specific facts. We may coordinate our suspension actions with other Federal agencies that have an interest in our findings. A suspension may result in your debarment from receiving Federal funding government-wide for up to three (3) years.

4. The Drug Free Workplace Act requires you to publish a statement about your drug-free workplace program. You must give a copy of this statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out.

You must maintain on file the place(s) where work is being performed under this award (i.e., street address, city, state, and zip code). You must notify the National Endowment for the Arts Office of Grants Management of any employee convicted of a violation of a criminal drug statute that occurs in the workplace (41 USC 701 et seq. and 2 CFR Part 3256).

5. Lobbying. You may not conduct political lobbying, as defined in the statutes and regulations listed below, within your Federally-supported project. In addition, you may not use Federal funds for lobbying specifically to obtain awards. For definitions and other information on these restrictions, refer to the following:

- 5.1 No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities (18 USC 1913).



- 5.2 Lobbying (2 CFR 200.450) describes the cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans as an unallowable project cost. The regulation generally defines lobbying as conduct intended to influence the outcome of elections or to influence elected officials regarding pending legislation, either directly or through specific lobbying appeals to the public.
- 5.3 Certification Regarding Lobbying to Obtain Awards. Section 319 of Public Law 101-121, codified at 31 USC 1352, prohibits the use of Federal funds in lobbying members and employees of Congress, as well as employees of Federal agencies, with respect to the award or amendment of any Federal grant, cooperative agreement, contract, or loan. While non-Federal funds may be used for such activities, they may not be included in your project budget, and their use must be disclosed to the awarding Federal agency. Disclosure of lobbying activities by long-term employees (employed or expected to be employed for more than 130 days) is, however, not required. In addition, the law exempts from definition of lobbying certain professional and technical services by applicants and awardees.
6. Davis-Bacon and Related Acts (DBRA), as amended, requires that each contract over \$2,000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works (these activities include, but are not limited to, painting, decorating, altering, remodeling, installing pieces fabricated off-site, and furnishing supplies or equipment for a work-site) must contain a clause setting forth the minimum wages to be paid to laborers and mechanics employed under the contract. Under the provisions of DBRA, contractors or their subcontractors must pay workers who qualify under DBRA no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.
- Information about the laborers and projects that fall under DBRA can be found in the U.S. Department of Labor's Compliance Guide at <https://www.dol.gov/agencies/whd/government-contracts/construction> . DBRA wage determinations are to be used in accordance with the provisions of Regulations, 29 CFR Part 1, Part 3, and Part 5, and with DOL's Compliance Guide. The provisions of DBRA apply within the 50 states, territories, protectorates, and Native American nations (if the labor is completed by non-tribal laborers).
7. The Native American Graves Protection and Repatriation Act of 1990 applies to any organization that controls or possesses Native American human remains and associated funerary objects and receives Federal funding, even for a purpose unrelated to the Act (25 USC 3001 et seq.).
8. U.S. Constitution Education Program. Educational institutions (including but not limited to "local educational agencies" and "institutions of higher education") receiving Federal funds from any agency are required to provide an educational program on the U.S. Constitution on September 17 (P.L. 108-447, Division J, Sec. 111(b)). For more information, go to the U.S. Department of Education's website at <http://www.ed.gov> and the Library of Congress website at [www.loc.gov](http://www.loc.gov).
9. Prohibition on use of funds to ACORN or its subsidiaries. None of the federal or matching funds expended for your awarded project may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries (P.L. 111-88 Sec. 427).