

Specific Terms & Conditions for Local Arts Agencies that Subgrant

These Specific Terms & Conditions (Specific T&Cs) apply to Local Arts Agencies (LAAs) eligible to make subawards or subgrants under a National Endowment for the Arts (or Arts Endowment) grant or cooperative agreement. As a companion to the ***National Endowment for the Arts General Terms & Conditions for Grants and Cooperative Agreements to Organizations (General Terms & Conditions, or GTCs)***, the Specific Terms & Conditions address requirements that apply to both the LAA in its role as a subgrantor of Federal or matching funds, and the subrecipient entities who receive such awards.

If you are using Federal funds – or funds that you allocate to meet the required cost share or match for the Arts Endowment award – for a subaward, you must inform subrecipients that they must comply with these mandates.

1. Subgranting Federal or Matching funds further defined by the Arts Endowment (P.L. 108-108, Section 309 (2), Nov. 10, 2003)

Per our legislation, only State Arts Agencies (SAAs), Regional Arts Organizations (RAOs), and Local Arts Agencies (LAAs) that are designated to operate on behalf of their local governments or are operating units of city or county government are eligible to subgrant Arts Endowment funds. The majority of awards for subgranting activity are made to SAAs and RAOs through the Arts Endowment Partnership program area. Awards may be made to designated LAAs through the Arts Endowment's other funding opportunities, such as Grants for Arts Projects: Local Arts Agencies category for subgranting, and subaward activity may also be supported through Cooperative Agreements awarded to these entities for the Arts Endowment's own initiatives.

An Arts Endowment subgrant is an award made by an Arts Endowment grantee or cooperator (sometimes called the "prime" or "direct" recipient) using Federal and/or cost share/matching funds.

- A subgrant exists when funds are re-granted 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 subgrant recipient is neither directly employed by nor affiliated with the direct award recipient.
- A subgrant relationship could exist even if you call the grant agreement a contract.

If you are approved to make subgrants as part of your award, you are considered a “pass-through” entity per the definition provided at 2 CFR Part 200.74, and you must also comply with the requirements for monitoring and management of all subgrantees/subrecipients who receive awards comprised of Federal and/or matching funds as described below.

NOTE: If subawards are made for *further* subawarding activity, the subrecipient becomes a pass-through entity as defined by 2 CFR Part 200 and must comply with all the provisions of items 3 and 4.

2. Additional Definitions (2 CFR 200.0-99 or the Arts Endowment)

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

Term	Citation	Definition
Federal share	2 CFR 200.43	The portion of the award's costs, including administrative or programmatic subaward/subgrant costs, that are paid by Federal funds.
Pass-through entity	2 CFR 200.74	A non-Federal entity that provides a subaward/subgrant to a subrecipient to carry out part of a Federal program. NOTE: This includes all LAAs who subgrant Arts Endowment or cost share/matching funds.
Prime entity or prime recipient	FFATA OMB guidance (8/27/2010)	A non-Federal entity that receives a direct Federal award; may also serve as a pass-through entity if eligible. (These terms are not included in 2 CFR 200, but have been more commonly used with FFATA and FSRS.)
Recipient cost share or match	Arts Endowment Guidelines, P.L. 108-108, Nov. 10, 2003 Arts Endowment GTCs	Non-Federal funds that are used to support additional costs for the project. For Arts Endowment grants, this means matching the Arts Endowment award at a minimum of one-to-one. LAAs may use a variety of sources to meet the required match.
Subaward	2 CFR 200.92	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 200.93	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.

3. Requirements for Pass-Through Entities (2 CFR 200.331)

Both the Arts Endowment's enabling legislation and the Uniform Administrative Requirements (2 CFR Part 200) include requirements for subawards/subgrants that are made under a Federal award.

- **You must abide by, or implement, all of the items below if you are making subawards with Arts Endowment or cost share/matching funds.**

- **Any subrecipients who make further subawards using Arts Endowment or cost/share matching funds must also comply with these requirements.**

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

As a reminder, the Arts Endowment 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. It is up to you to determine the method that allows for the fullest compliance with the requirements outlined below.

3.1 Review Criteria. In accordance with the Arts Endowment's enabling legislation, you must include "artistic excellence and artistic merit" in the review criteria used to make the subgrant awards (20 USC Sec. 951 et seq.).

3.2 Eligible Subrecipients.

3.2.i 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 subgranted through an Arts Endowment award (20 USC Sec 954 (f)).

3.2.ii Individuals. Support to individual artists may be allowable if the award funds programs and activities and is not a one-time monetary recognition award. Awards to individuals should include 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 neither the Federal funds nor the cost share/ matching funds can support a fellowship solely as an honorific, costs for this type of award program must not be included in the budget or financial reports for the Arts Endowment award

3.3 Unique Entity Identifier. You may not make a subaward with Federal or cost share/matching funds to an eligible organization (entity) without a unique entity identifier, currently a DUNS number. Thus, you must notify potential subrecipients that they cannot receive a subaward from you unless they provide a valid DUNS number.

NOTE: Individuals receiving subawards do not need to have a DUNS number (2 CFR 25 Appendix A I.B.)

3.4 Review of Risk. You must evaluate each subawardee's or subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward/subgrant and consider imposing specific subaward conditions if appropriate (2 CFR 200.331(b), (c), and (e)).

3.5 Acceptance of Federally-recognized Indirect Cost Rates. Unless you have noted otherwise in your funding opportunity notice (e.g., guidelines), you must accept an approved indirect cost rate negotiated between the subrecipient and the Federal Government (2 CFR 200.331(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 10% of modified total direct costs (2 CFR 200.414(f)).

NOTE: The reasons for the disallowance of indirect costs must be based on a legislative requirement or because the funding opportunity is restricted to direct costs only (e.g. artist fees), not agency preference.

- 3.6 Identification of Federal or Matching Funds.** You must identify 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 the Federal award. You must also identify the Federal Awarding Agency and provide other required information as outlined in **Appendix A**.

2 CFR 200.331 requires that this information is conveyed,

- At the time the subaward is made,
- When/if any of these data elements change, or
- In a subsequent subaward modification.

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/subgrant and provide updates to the subrecipient as necessary upon the receipt or disbursement of Federal or matching funds (2 CFR 200.331 (a) (1)).

- 3.7 Other Federal Requirements.** You must inform the subrecipient of any other Federal requirements that "flow down" as outlined in Section 4 below.

The Arts Endowment 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.

- 3.8 Monitoring.** You must monitor the activities of your subgrantee(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 200.331(d - h)).

- 3.9 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 3 years after the date you submit your Federal Financial Report to the Arts Endowment (2 CFR 200.331 (a)(3)).

- 3.10 FFATA Reporting.** 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 through the Federal Subrecipient Reporting System at www.fsr.gov (2 CFR 170) by the end of the month after the subaward is made.

3.11 Record Retention and Access. You must inform subrecipients that they must permit you and your auditors access to their records and financial statements as necessary for you to ensure compliance with the Federal award requirements (2 CFR 200.331 (a)(5) and .333).

3.12 Closeout. All subawards made with Federal or matching funds must be closed out (including submission and approval of all subrecipient final reports and disbursement of all Federal and matching funds) **prior to** closing out your Federal award.

- If you extend a subgrant 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.
- However, subawards that encounter significant delays could (unless required to meet the cost/share match) be removed from the scope of the Arts Endowment award to avoid continued delays in closing out the Federal award (2 CFR 200.77 and 2 CFR 200.331(a)(6)).

4. Flow-through of National Policy and Other Legal Requirements to Subrecipients

The Federal requirements associated with the Arts Endowment award also "flow down" to the subrecipients of Federal funds or funds that are used to meet the required cost share/match. Therefore, in addition to informing the subrecipient that they are receiving a Federal subaward, or one that is being used to match a Federal grant, you must provide them with information regarding the 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 (See GTC Appendix A).

4.1 Required Information. You must identify a subaward that is made with Federal or matching funds as such to your subrecipient(s), and provide them with the information required under 2 CFR 200.331 (See **Appendix A** below).

NOTE: 2 CFR 200.331 requires that this information is conveyed at the time the subaward is made, when/if any of these data elements change, or in a subsequent subaward modification. 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 matching funds.

4.2 Terms & Conditions. You must provide subrecipients with Terms & Conditions for their award that outline all requirements for managing their award. These Terms & Conditions must include or reference all of the Federal requirements that "flow down" to the subaward/subgrant, instructions for submitting performance and financial reports required by your agency, and information relating to the closeout of the subaward/subgrant.

Appendix A: Required Data Elements for Subaward Notices under 2 CFR 200.331

Pass-through entities are required to provide subrecipients with the following information any time a subaward/subgrant is made with Federal funds or funds that are used to meet Federal grant's required match. 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/subgrants to which Federal/cost share/matching funds are obligated are in compliance with all other Terms & Conditions for the Arts Endowment award.

- Although these are data elements required for making subawards/subgrants, 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.

(2) In the case of subawards that are being made only with your cost share/matching funds, you would list the Federal amount as zero but include all other required data elements, so that the recipient understands this award cannot be used to match another Federal grant.

**** NOTE:** For items (vi), (vii) and (viii), 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 award.

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 (viii), "Total Amount of the Federal Award."

2 CFR 200.331	SAMPLE RESPONSE	NOTES
(i) Subrecipient name	<i>Dance Council of Birmingham</i>	Legal name of the subrecipient; must match the entity's name in their D&B record.
(ii) Subrecipient's unique entity identifier	<i>DUNS # of Subrecipient</i>	The subrecipient's DUNS number; must reflect legal name and current address.
(iii) Federal Award Identification Number (FAIN)	<i>xxxxxxx-62-21</i>	The Arts Endowment grant number as included on the LAA's Arts Endowment award document.
(iv) Federal Award Date	<i>May 15, 2021</i>	The date stamped on the LAA's Arts Endowment award document.
(v) Subaward Period of Performance	<i>July 1, 2021 - May 31, 2022</i>	The start and end dates for the sub-award grant period; must be <u>within</u> the period of performance for the LAA's Arts Endowment award.
(vi) Amount of Federal Funds Obligated by this action	<i>(n/a)</i>	**
(vii) Total Amount of Federal Funds Obligated to the subrecipient	<i>(n/a)</i>	**
(viii) Total Amount of the Federal Award	<i>\$10,000</i>	**Amount of Federal funds awarded from the Arts Endowment grant.

2 CFR 200.331	SAMPLE RESPONSE	NOTES
(ix) Federal award project description	<i>To support a subgranting program providing commissioning funds to small and mid-sized dance companies.</i>	The project description for the LAA's Arts Endowment award as described on the Arts Endowment award document.
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official	<ul style="list-style-type: none"> • <i>National Endowment for the Arts</i> • <i>Birmingham Arts Council</i> • <i>John Doe, BAC Exec. Director</i> • <i>555-333-5555</i> • <i>email@BAC.gov</i> 	The Arts Endowment's name, the LAA's name, and name and contact information for the person authorizing the subaward on the LAA's behalf.
(xi) CFDA Number and Name	<i>45.024 Promotion of the Arts - Grants to Organizations and Individuals</i>	The Arts Endowment's CFDA # and title as listed on the Arts Endowment award document.
(xii) Identification of whether the award is R&D		Notification if the project being supported is considered Research & Development as defined at 2 CFR 200.87; if not applicable per LAA program guidelines, can be omitted.
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR 200.414)		The Indirect cost rate you approve for the subaward, if any. See 3.5 for more detail.