

**NATIONAL ENDOWMENT FOR THE ARTS
REQUIREMENTS FOR SUBGRANT RECIPIENTS**

Funding for Delaware Division of the Arts grants and services is made possible, in part, by grants from the National Endowment for the Arts (NEA). Organizations receiving Division of the Arts grants are therefore considered subgrant recipients of NEA and, as such, are required to comply with the following federal laws, rules, regulations, and OMB circulars that apply to NEA grant recipients. To review detailed information about these requirements, visit NEA's website at (www.arts.gov). Then proceed as follows:

Click on **Grants** ⇨

Click on **Manage Your Award** ⇨

Click on **Partnership Agreements** ⇨

Click on **General Terms & Conditions** or Click on **Legal Requirements, Office of Management and Budget (OMB) Circulars**, or Click on **Office of Inspector General**

1. Uniform Administrative Requirements

- a. Subgrant recipients ("subgrantees") that are units of state and local governments and Federally-recognized Indian Tribal governments are subject to the administrative requirements codified by the Endowment at "45 CFR Part 1157 - Uniform Administrative Requirements for Grants & Cooperative Agreements to State and Local Governments" ("Common Rule").
- b. Subgrantees that are nonprofit organizations, colleges and universities are subject to the requirements of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," as amended.

2. Allowable Costs

The allowability of costs for work performed under an Endowment grant shall be determined in accordance with the applicable Federal cost principles and the terms and conditions of the grant award. The following OMB Circulars set forth the Federal cost principles that, generally, apply to subgrantees:

- a. OMB Circular A-87, "Cost Principles for State and Local Governments," as amended: state, local and Federally-recognized Indian tribal governments;
- b. OMB Circular A-122, "Cost Principles for Nonprofit Organizations," as amended: nonprofit organizations, exclusive of institutions of higher education; and
- c. OMB Circular A-21, "Cost Principles for Educational Institutions," as amended: public and private institutions of higher education.

3. Nondiscrimination and Other Assurances

a. Nondiscrimination and Other Statutes.

Subgrantees are required to execute projects, productions, workshops and programs in accordance with the requirements of Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990; where applicable.

- (1) **Title VI of the Civil Rights Act of 1964**, as amended, 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 the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (42 U.S.C. 2000d et seq.)

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- (2) **Title IX of the Education Amendments of 1972** provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance. (20 U.S.C. 1681 et seq.)
- (3) **Age Discrimination Act of 1975** provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (42 U.S.C. 6101 et seq.)
- (4) **Section 504 of the Rehabilitation Act of 1973** provides that no otherwise qualified individual with a disability, in the United States, as defined in Section 7(6), shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (29 U.S.C. 794)
- (5) **The Americans with Disabilities Act (“ADA”) of 1990** 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 U.S.C. 12101-12213)

b. Section 504 Self-Evaluation

A self-evaluation must be on file at your organization. The Endowment has also developed a Program Evaluation Workbook that may be used by subgrantees to conduct a self-evaluation to determine if they are in compliance with 504 requirements. Subgrantees, who have not previously conducted this self-evaluation or wish to update the results of previously conducted evaluations, may wish to request a copy of the Program Evaluation Workbook, free of charge, from the Office of Civil Rights, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506-0001.

Additional Resources: The Endowment has developed several publications to assist arts groups in making their facilities and activities accessible to people with disabilities. *The Arts and 504* is a how-to handbook for making the arts accessible. Copies of this handbook, as well as copies of the non-discrimination regulations identified above, may be obtained by writing to the Office of Civil Rights, National Endowment for the Arts, at the above address. The Endowment, in partnership with the National Assembly of State Arts Agencies, has produced a 700-page document entitled, *Design for Accessibility: An Arts Administrators Guide*. It provides detailed guidance on making access an integral part of an organization's staffing, mission, budget, and programs. The guide is available from the National Assembly of State Arts Agencies, 1029 Vermont Avenue, Second Floor, Washington, DC 20005 (202-347-6352, or nasaa-arts.org). The cost is \$66.00 for nonprofits and \$96.00 for others.

c. Other Assurances

Subgrantees are also required to execute projects, productions, workshops and programs in accordance with the requirements of National Endowment for the Arts' regulations implementing Executive Orders 12549 and 12689, “Debarment and Suspension,” and 20 U.S.C. Sec. 951 et seq., the Endowment's enabling legislation that requires “artistic excellence and artistic merit” to be included in the criteria upon which subgrants are awarded. Copies of these regulations may be obtained by writing to the Office of General Counsel at the above address.

With respect to “Suspension and Debarment,” a subgrant applicant must certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees that it will include this clause without modification in all lower tier covered transactions (excluding contracts under \$25,000), solicitations and proposals. Where the subgrant applicant or any lower tier participant is unable to certify to this statement, it shall include an explanation as part of the application package.

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4. Lobbying

Subgrantees are prohibited from conducting general political lobbying, as defined in relevant statutes, regulations, and OMB Circulars, within a Federally-supported grant project. In addition, subgrantees are prohibited from using Federal funds for lobbying specifically to obtain grants. Subgrantees are requested to note the following regarding lobbying activities:

a. **18 U.S.C. Sec. 1913 Lobbying with Appropriated Moneys**

“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, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.”

b. **OMB Circular A-122 - “Lobbying” Revision**

OMB Circular A-122, “Cost Principles for Nonprofit Organizations, Lobbying Revision,” published at 49 Federal Register 18260 (April 27, 1984), makes clear that lobbying, as defined therein, is an unallowable cost. OMB Circular A-122 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.

c. **Certification Regarding Lobbying to Obtain Grants**

(Section 319 of Public Law 101-121, codified at 31 U.S.C. Sec. 1352). This law prohibits the use of Federally-appropriated funds to pay costs associated with lobbying members of Congress, employees of Congress, and employees of Federal agencies with respect to the award or amendment of any Federal grant, cooperative agreement, contract or loan. While subgrantee applicants and subgrantees may use non-Federal funds for such activities, use of these funds must be disclosed to the Federal agency. The law exempts from the disclosure requirement the lobbying activities of long-term employees (those employed or expected to be employed for more than 130 days) of a subgrantee applicant or subgrantee. The law also exempts from the definition of lobbying certain agency and legislative liaison activities and professional and technical services by subgrantee applicants and subgrantees.

This law requires subgrant applicants who request or are recommended to receive more than \$100,000 through an Endowment-supported grant to execute a certification that they have not and will not use Federally-appropriated funds for lobbying; that they will disclose (through a government standard form) the use of other funds for lobbying activities; and that they will require similar certifications from their subgrantees or contractors who receive more than \$100,000 under the grant-supported project.

Copies of the Endowment's regulations implementing Section 319 of Public Law 101-121 are published at 45 CFR Part 1158. Subgrantees are urged to review these regulations carefully.

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5. *National Historic Preservation Act of 1966, as amended*

This law applies to any Federal funds that would support either the planning or major renovation of any structure eligible for or on the National Register of Historic Places, in accordance with Section 106. This law also applies to new construction that would affect such properties. Your state arts agency or regional arts organization, in conjunction with your State Historic Preservation Officer, is required to provide the Arts Endowment with a finding as to the impact of your plan or renovation on the structure or any affected properties. Any change in your design, renovation, or construction plans must be submitted to the Arts Endowment through your state arts agency or regional arts organization for review and approval prior to undertaking any of the proposed changes. (16 U.S.C. 470)

6. *National Environmental Policy Act of 1969*

This law applies to any Federal funds that would support an activity that may have environmental implications. Your state arts agency or regional arts organization may request that you provide information to the Arts Endowment in response to specific questions in accordance with the Act. The Arts Endowment will then determine whether to undertake an environmental assessment or issue a "finding of no significant impact." A "finding of no significant impact" requires no additional action by the Arts Endowment or you. (42 U.S.C. Section 4332)

7. *Native American Graves Protection and Repatriation Act of 1990*

This law applies to any organization which controls or possesses Native American human remains and associated funerary objects, and which receives Federal funding, even for a purpose unrelated to the Act. (25 U.S.C. 3001 et seq.)

8. *Foreign Travel*

All travel outside the United States, its territories, and Canada must be approved by your state arts agency or regional arts organization before travel is undertaken. Additionally, any foreign air travel (inclusive of persons or property) that is paid in whole or in part through an Endowment-supported grant must be performed on a U.S. air carrier or a foreign air carrier under an air transport agreement with the United States when these services are available. U.S. air-carrier service is considered available even though a comparable or different kind of service can be provided at less cost by a foreign air carrier and/or foreign air-carrier service is preferred by, or is more convenient for, the traveler. For additional guidance on foreign travel, please contact your state arts agency.

9. *Equipment*

Consistent with 41 U.S.C. 10a-10c, "Buy American Act," subgrantees who are purchasing equipment and products through an Endowment-supported grant are encouraged, whenever possible, to purchase American-made equipment and products.

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10. Labor Standards

- a. Compensation.** All professional performers and related or supporting personnel employed on projects or productions financed in whole or in part under the Endowment-supported grant shall receive not less than the prevailing minimum compensation as determined by the Secretary of Labor. Labor standards are set out in 29 CFR Part 505 "Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts and Humanities."
- b. Working Conditions.** No part of any project or production which is financed in whole or in part under the Endowment-supported grant will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in such project or production. Compliance with the safety and sanitary laws of the State in which the performance or part thereof is to take place shall be prima facie evidence of compliance.

11. Final Report

Subgrantees are required to submit final expenditure and descriptive reports at the completion of their project to their state arts agency or regional arts organization.

12. A-133 Audit Requirements

OMB Circular A-133, "Audits of States, Local Governments and Nonprofit Organizations," includes specific guidance for conducting financial and compliance audits. The threshold for requiring an audit is \$500,000 in yearly expenditures of Federal awards. This amount is the aggregate of funds from all Federal sources.