



# General Terms, Conditions & Release Information for Grants & Awards

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**Montana Arts Council**

PO Box 202201  
Helena, MT 59620  
[www.art.mt.gov](http://www.art.mt.gov)

406.444.6430 (phone)  
406.444.6548 (fax)  
711 (tty)  
[mac@mt.gov](mailto:mac@mt.gov) (email)

Online Grant Logon: <https://www.grantinterface.com/Common/LogOn.aspx?eqs=y0lvNTomAgVA2A0t7dII-H8njA1NVVBa0>

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### **Federal & State Assurances**

Please read these Terms and Conditions carefully.

Applicant organizations must adhere to federal and state fair labor standards, civil rights statutes, Americans with Disabilities Act (ADA) accessibility regulations, age discrimination statutes, regulations regarding lobbying with appropriated monies, and accounting record requirements.

### **Cost Principles**

The allowable costs for work performed under an Arts Endowment award shall be determined in accordance with the applicable Federal cost principles and the terms and conditions of the award. The following OMB Circulars set forth the Federal cost principles that, in general, apply to our recipients. They are available [www.whitehouse.gov/omb/grants\\_default/](http://www.whitehouse.gov/omb/grants_default/) These cost principles, as applicable, are hereby incorporated into this award:

- a. **OMB Circular A-122 (2 CFR 230), "Cost Principles for Nonprofit Organizations,"** as amended: nonprofit organizations, exclusive of institutions of higher education;
- b. **OMB Circular A-21 (2 CFR 220), "Cost Principles for Educational Institutions,"** as amended: public and private institutions of higher education;
- c. **OMB Circular A-87 (2 CFR 225), "Cost Principles for State and Local Governments,"** as amended: state, local and Federally recognized Indian tribal governments; and
- d. **Federal Acquisition Regulation (FAR) at 48 CFR Part 31** for commercial organizations, individuals, and those nonprofit organizations listed in Attachment C to OMB Circular A-122. The FAR is available online at [www.acquisition.gov/far/](http://www.acquisition.gov/far/)

### **National Policy & other Legal Requirements, Statutes, & Regulations that Govern Your Award**

**Nondiscrimination Policies.** As a condition of receipt of Federal financial assistance, you agree to execute your project (e.g., productions, workshops, programs, etc.) in compliance with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to the following.

- a. **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 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 U.S.C. 2000d et seq.) 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. For assistance and information go to [www.lep.gov](http://www.lep.gov).

**b. Title IX of the Education Amendments of 1972** provides that no person in the United States shall, on the basis of sex or blindness, 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 U.S.C. 1681 and 1684 et seq.)

**c. Section 504 of the Rehabilitation Act of 1973** 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 U.S.C. 794)

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

**A Section 504 self-evaluation must be on file at your organization.** For each award, review the evaluation to ensure that it is still accurate, that your organization is still in compliance, and that the activity supported by the Arts Endowment will be in compliance. The lack of a Section 504 Self-Evaluation is one of the most common findings referenced by our Inspector General when conducting an audit or review. We have developed a *504 Self Evaluation Workbook* (which covers programs, activities and facilities) that you may use to determine if you are in compliance with 504 requirements. If you have not previously conducted this self-evaluation or wish to update the results of previously conducted evaluations, you may obtain the *Workbook* on our Web site: [www.arts.gov/about/504Workbook](http://www.arts.gov/about/504Workbook). Or you may request a hard copy, free of charge, from the NEA's Office of Civil Rights at (202) 682-5454.

*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. The Handbook and other resources may also be downloaded from the Arts Endowment's Web site at [www.arts.gov/resources/Accessibility](http://www.arts.gov/resources/Accessibility). If you have questions, contact the Office of Accessibility at [accessibility@arts.gov](mailto:accessibility@arts.gov); 202/682-5733; FAX 202/682-5715, TTY 202/682-5496.

**d. The 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 benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (42 U.S.C. 6101 et seq.)

**e. The Americans with Disabilities Act of 1990 ("ADA")** prohibits discrimination *on the basis of disability* in employment (Title I), state and local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213)

#### **Environmental and Preservation Policies**

**a. The National Environmental Policy Act of 1969 (NEPA)**, 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 in accordance with the Act. If there are environmental implications, we will then 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 Section 4332.

**b. The National Historic Preservation Act of 1966 (NHPA)**, as amended, 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 project activities, such as new construction, that would affect such properties. We will consult with your State Historic Preservation Officer, as appropriate, to determine 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 us for review and approval prior to undertaking any of the proposed changes. You may be asked to provide additional information on your project to ensure compliance with the Act. (16 USC 470)

#### **Other National Policies**

**a. Debarment and Suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by the Arts Endowment in Title 2 CFR, Chapter 32, Part 3254. There are circumstances under which we may receive information concerning your fitness to carry out a project and administer Federal funds--for instance:

Conviction of, or a civil judgment for, the commission of fraud, embezzlement, theft, forgery, making false statements;

Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility; and/or

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 years.

**b. 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 Arts Endowment's Grants & Contracts Officer of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. (41 U.S.C. 701 et seq. and 45 CFR Part 1155)

### **c. Lobbying**

You may not conduct political lobbying, as defined in the statutes, regulations and OMB Circulars 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:

(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. Lobbying with appropriated moneys.)

(2) **OMB Circular A-122 – "Lobbying" Revision** clarifies that lobbying is an unallowable project cost. The Circular 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. You should review carefully both this Circular and Circular A-110. (2 CFR 215).

(3) **Certification Regarding Lobbying to Obtain Awards.** Section 319 of Public Law 101-121, codified at 31 U.S.C. Sec. 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 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.

**We strongly advise you to review these regulations carefully.** They are published at 45 CFR Part 1158, and can be found at <http://www.gpo.gov/fdsys/>.

**d. 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 Department of Labor's (DOL) Compliance Guide at [www.dol.gov/compliance/guide/dbra.htm](http://www.dol.gov/compliance/guide/dbra.htm). 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).

**e. 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 U.S.C. 3001 et seq.)

**f. U.S. Constitution education program.** Educational institutions (includes but is 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 [PL 108-447, Division J, Section 111(b)]. For more information on how to implement this requirement and suggested resources, see [www2.ed.gov/policy/fund/guid/constitutionday](http://www2.ed.gov/policy/fund/guid/constitutionday) and <http://thomas.loc.gov/teachers/constitution.html>

**g. Arts Endowment enabling legislation.** You are also required to execute projects, (e.g., productions, workshops, programs, etc.) in accordance with the Arts Endowment's enabling legislation that requires "artistic excellence and artistic merit" to be included in the criteria upon which awards are made.

**h. Prohibition on use of funds to ACORN or its subsidiaries. Beginning in FY10** (award number such as 10-xxxx-xxxx or DCA 2010-xx) 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)

### **Uniform Administrative Requirements**

Nonprofit organizations and colleges and universities are subject to the provisions of OMB Circular A-110 ("Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"), as amended. Units of state and local governments and Federally-recognized Indian Tribal governments are subject to the administrative requirements codified by the Arts Endowment at "45 Code of Federal Regulations (CFR) Part 1157 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" ("Common Rule"). Both are available through a link on our Web site.

The "Uniform Administrative Requirements" establish administrative standards to ensure consistency among recipients of Federal awards. These include financial and program management, property and procurement standards, cost sharing or matching, and reporting and record retention. These requirements, as applicable, are hereby incorporated into this award.

## **Subgranting for State Arts Agencies, Regional Arts Organizations, and Designated Local Arts Agencies**

### **Subgranting**

Per our legislation, only State Arts Agencies, Regional Arts Organizations, and designated Local Arts Agencies are eligible to subgrant Arts Endowment funds.

A subgrant is an award made by a grantee or cooperator using award and/or matching funds (i.e., an award resulting from Arts Endowment support, but not one made directly by us). A subgrant exists when funds are regranted to an individual or an organization for activities conducted independently of the direct award recipient and for the benefit of the subgrantee's program objectives. A subgrant recipient is neither directly employed by nor affiliated with the direct award recipient. Please be aware that a subgrant relationship could exist even if you call the agreement a contract.

### **General Subgranting Requirements**

a. **Artistic Excellence and Artistic Merit.** 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 U.S.C. Sec. 951 et seq.)

b. **Subgranting to Eligible Organizations, Units of State and/or Local Government.** 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.

Effective with NEA awards beginning with the number 11- or 2011-, you may not make a subaward to an entity without a DUNS number (2 CFR 25Appendix A). Thus, you must notify potential subrecipients that the entity cannot receive a subaward from you unless the entity has provided its DUNS number.

The Federal laws, rules, regulations and OMB Circulars that apply to Arts Endowment organizational award recipients generally also apply to such organizations when they receive a subgrant through an Arts Endowment-supported award. Thus, you should inform subgrantees that they are receiving Federal funds from the National Endowment for the Arts, and that they must comply with these mandates.

You must also:

Provide them with the Federal award number and associated CFDA number (the CFDA number is on your award letter or cooperative agreement document).

Instruct them that there may be no overlapping project costs between Federal awards, whether they receive them directly from a Federal agency or indirectly, such as through a state agency or other entity.

c. **Requirements for Federal Funding Accountability and Transparency Act (FFATA) implementation of subaward reporting.** Effective with NEA awards beginning with the number 11- or 2011-, you may be required to report subaward information to the FFATA subaward report database [www.fsr.gov/](http://www.fsr.gov/), as described in 2 CFR Part 170. This requirement applies to subawards of \$25,000 or more in Federal funds. Additional information is available at [www.arts.gov/manageaward/FFATA-FAQ.pdf](http://www.arts.gov/manageaward/FFATA-FAQ.pdf)

d. **Additional Requirements for Subgranting to Organizations and Individuals.** Your subgrant agreements must include a requirement that the subgrantee:

- provides you with final reports and any other information or reports necessary for you to fulfill all applicable Federal reporting requirements
- adheres to the prohibition against lobbying within a Federally-supported grant or cooperative agreement
- uses U.S. air carriers for foreign travel
- maintains records pertinent to the award for three years following submission of the final report to you.

e. **Progress reports.** State Arts Agencies should require a progress report from their subgrantees, with discretion to determine when these reports must be submitted.

f. **Time extensions.** You should request a period of support time extension (not a final report due date extension) from the Arts Endowment whenever a subgrantee's project cannot be completed within your award period. See Item 7.

g. **Subgrantee records.** You must keep subgrantees' report submissions on file for three years from the date you submit your Federal Financial Report to the Arts Endowment.

### **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 A-133 audit is \$500,000 in *yearly expenditures* of Federal funds. This amount is the aggregate of funds from all Federal sources. OMB Circular A-133 and the yearly compliance supplements are available online at [www.whitehouse.gov/omb/grants\\_circulars](http://www.whitehouse.gov/omb/grants_circulars).

### **State of Montana Law**

Grantees are required to abide by all state law including but not limited to the following.

**2-3-103. Public participation -- governor to ensure guidelines adopted.** (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in [2-3-202](#), must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#).

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

**2-3-212. Minutes of meetings -- public inspection.** (1) Appropriate minutes of all meetings required by [2-3-203](#) to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

(a) the date, time, and place of the meeting;

(b) a list of the individual members of the public body, agency, or organization who were in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.