

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER, THE
THEATER OFFENSIVE, and THEATRE
COMMUNICATIONS GROUP,

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS; MARY ANNE CARTER, in her of-
ficial capacity as Acting Chair of the Na-
tional Endowment for the Arts,

Defendants.

Civil Action
No. 25-cv-79-WES-PAS

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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The Plaintiffs (or their members) are theater artists concerned that the National Endowment for the Arts (“NEA”¹) might implement a recent Executive Order (“EO”) in a way that could violate the Administrative Procedure Act (“APA”) and the First and Fifth Amendments. The Plaintiffs anticipate applying to the NEA’s Grants for Arts Program (“GAP”), the only NEA program at issue in this case. But the specific relief that the Plaintiffs seek in their motion for preliminary injunction (ECF 2-1 at 34) is no longer necessary. As of March 11, 2025, the NEA is: (1) no longer requiring GAP applicants to certify that they will comply with the EO and (2) is no longer applying the EO in its grantmaking decisions. Instead, the NEA has initiated a new administrative proceeding to assess whether, and if so how, to implement the EO. The NEA’s GAP program is operating today just as it had before the contested EO issued in January 2025.

Because the Plaintiffs’ preliminary-injunction motion seeks relief from circumstances that no longer exist, the Court should deny the motion on any one or more of the following four grounds. First, because there is no case or controversy for this Court to adjudicate, the Plaintiffs lack standing. Without any agency action to challenge, the Plaintiffs cannot show any injury in fact. Their concern about any impact of the NEA’s potential adoption of any part of the EO is speculative. Their alleged harms are the same as they would face in selecting any project that might qualify for an NEA grant.

Second, even if the Plaintiffs had standing, their claims are not ripe for adjudication. Whether and how the NEA might implement the EO is unknown. Separation-of-powers principles counsel against judicial intervention in ongoing administrative proceedings that might yield a result that could obviate any judicial intervention. There is no irreparable harm in waiting for the NEA to complete its ongoing administrative review, as the Plaintiffs could renew their request for preliminary relief if, and when, their alleged harm should become more concrete and immediate.

¹ For convenience, the government refers to both Defendants—the NEA and its Senior Advisor, Mary Anne Carter—as the NEA.

Third, without any agency action to review, none of the Plaintiffs' alleged causes of action can satisfy the Plaintiffs' burden to qualify for preliminary relief under Federal Rule of Civil Procedure 65. The absence of agency action prevents all claims under the APA and the U.S. Constitution, as they all turn on the agency action that the NEA rescinded on March 11, 2025.

Finally, even if the preceding hurdles did not preclude preliminary relief, the Plaintiffs' motion still fails because they have failed to articulate any irreparable harm. Whatever the NEA does or does not do with the EO, no GAP applicant is entitled to funding. Most applicants will be rejected under criteria independent of the EO (whether or however the EO might apply after the NEA's ongoing evaluation). And for an applicant that is selected, the NEA funds only a single project that an applicant proposes, and at most only 50 percent of that single project's expenses. With or without the EO, every GAP applicant confronts the same dilemma. They must conceive of a single project that they think optimizes their chances for partial funding. They must juggle all the logistical planning and scheduling around that contingency (and incur any corresponding expenses). They still must confront the more-likely-than-not possibility that the NEA ultimately may not fund their projects. And, even if the NEA funds their projects, they still must fill a funding gap from other sources. That is not irreparable harm, nor is it significant enough to short-circuit an ongoing administrative proceeding that might, or might not, obviate the sole ground for the Plaintiffs' case. The Court should deny the motion.

BACKGROUND

The NEA's selective, partial grantmaking process

Congress created the NEA in 1965. The President appoints the NEA's Chair with the advice and consent of the Senate, and the Chair principally administers selective grantmaking for arts projects. 20 U.S.C. §§ 954(b)(1), (c). The statute sets forth a range of objectives for such funding—namely, projects of artistic and cultural significance and excellence. *E.g.*, 20 U.S.C. § 954(c)(1)-(4). In February 2025, NEA published on its website the details of its GAP program for fiscal year 2026. ECF 2-2, Ex. 1. This notice describes the NEA's selective, grantmaking procedures and terms for the program.

The NEA anticipates rejecting more than half of the GAP applications. *Id.* at 4. GAP funding for any winning project is limited. GAP funds only arts “projects”—a word used more than 240 times in the NEA’s notice—“with specific, definable activities.” *Id.* at 9 & generally; 20 U.S.C. § 954(c). GAP does not fund an applicant’s general operations or full season of programming. ECF 2-2, Ex. 1 at 6. Typically, GAP awards may not exceed 50 percent of a project’s costs. 20 U.S.C. § 954(e). And the funding of a winning project is typically between \$10,000 to \$100,000,² contingent on available funds. ECF 2-2, Ex. 1 at 4.

There are two GAP application cycles (GAP 1 and GAP 2), and each has two deadlines: Part 1 for the Grants.gov submission and Part 2 for the NEA applicant Portal submission. *Id.* at 21. GAP 1’s Part 1 deadline was March 11, 2025. *Id.* at 5, 23. The NEA extended GAP 1’s Part 2 deadline from March 24, 2025, to April 7, 2025. ECF 10 ¶ 9. GAP 2’s Part 1 deadline is July 10, 2025. ECF 2-2, Ex. 1 at 5, 23. In Part 1 of either cycle, applicants must check a box next to “I agree” on an electronic Assurance of Compliance form by which the applicant certifies compliance with various legal requirements. *E.g.*, Ex. 1 (Bolan Decl., Ex. A (NEA, Legal Requirements and Assurance of Compliance (Mar. 11, 2025), <https://www.arts.gov/grants/legal-requirements-and-assurance-of-compliance>)); ECF 2-4, Ex. A (depicting electronic form).

NEA staff first check applications for “completeness and eligibility.” ECF 2-2, Ex. 1 at 25. Program eligibility requirements include limits on (among other things) artistic disciplines, *id.* at 6-8; specific project activities and costs, *id.* at 10-11; 20 U.S.C. § 954(e); applicant type (*e.g.*, no individuals), *e.g.*, ECF 2-2, Ex. 1 at 13; and number of applications (typically one per calendar year), *id.* at 15.

Different NEA personnel then take three separate, sequential steps. First, advisory panels, convened by artistic discipline and including “arts experts,” evaluate eligible applications. Those advisory panels submit their recommendation on all projects for subsequent review by the National Council on the Arts (the “Council”). 20 U.S.C. § 959(c); ECF 2-2, Ex. 1 at 25-26.

² The range is higher for “Local Arts Agencies,” ECF 2-2, Ex. 1 at 4, but no Plaintiff describes itself as such.

Second, the Council's voting members re-evaluate all applications and submit their recommendations to the Chair. The Council includes the Chair; six members of Congress (who lack any vote); and another 18 members, all appointed by the President by and with Senate advice and consent who are private citizens and arts professionals with experience and achievement in the arts. 20 U.S.C. § 955(b).

Third, the Chair selects winning applications. The Chair may not select applications that the Council has recommended denying, and typically may not adjust the amount of funding that the Council has recommended for a project. 20 U.S.C. § 955(f); ECF 2-2, Ex. 1 at 23, 26.

Throughout these steps, the mandatory, affirmative review criteria are "artistic excellence" and "artistic merit," which are weighted equally. *E.g.*, 20 U.S.C. §§ 954(d)(1), 955(f)(1), 959(c). No project "determined to be obscene" may receive funding. 20 U.S.C. § 954(d). The permissive criteria are "general standards of decency and respect for the diverse beliefs and values of the American public." 20 U.S.C. § 954(d)(1). As the Supreme Court recognized in *National Endowment for the Arts v. Finley*, these criteria necessarily implicate "content-based considerations" that inevitably result in "denying money to a larger amount of constitutionally protected expression." 524 U.S. 569, 585 (1998) (cleaned up).

The NEA will notify applicants of the approval or denial of their proposed projects in December 2025 (for GAP 1) or in April 2026 (for GAP 2). GAP 1 recipients may start their projects as early as January 1, 2026. GAP 2 recipients may start theirs as early as only five months later: June 1, 2026. ECF 2-2, Ex. 1 at 5, 23. For projects that receive NEA funding, the grantee must acknowledge the NEA's partial funding in relation to the grantee's winning project. Ex. 1 (Bolan Decl., Ex. B at 6-7 (NEA, General Terms and Conditions for Federal Financial Assistance Awards to Organizations (Apr. 22, 2024), <https://www.arts.gov/sites/default/files/FY25-GTC-ORGs-11.5.2024.pdf>). Through the Assurance of Compliance, the NEA reserves its rights to ensure that grant recipients comply with the terms of the NEA's awards. Ex. 1 (Bolan Decl., Ex. A at 10); 20 U.S.C. § 954(h).

Executive Order 14168

On January 20, 2025, the President issued Executive Order 14168 (“Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”), 90 Fed. Reg. 8615 (Jan. 20, 2025) (again, the “EO”). This EO, in part, sets forth a policy “to recognize two sexes, male and female” relative to a person’s biological classification at conception, and defines “gender ideology,” in part, as contrary to that policy. EO §§ 2 & 2(a), (d)-(f). The EO instructs federal agencies to “assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology,” EO § 3(g), subject to the legal authority granted to agency decisionmakers and “consistent with applicable law,” EO §§ 8(a)(i) & (b). The EO does not regulate what private persons choose to say or not to say. Instead, by its plain terms, the EO “govern[s] all Executive interpretation of and application of Federal law and administration policy.” EO § 2.

On February 6, 2025, the NEA updated its Assurance of Compliance to ask GAP applicants to certify their compliance with the EO. ECF 10 ¶ 6. On March 6, 2025, the Plaintiffs sued the NEA in this Court to challenge the certification requirement and the use of the EO in evaluating GAP applications. ECF 1. On March 11, 2025, the NEA rescinded the certification requirement as to the EO. ECF 10 ¶ 8; Ex. 1 (Bolan Decl., Ex. A at 12).

In a memorandum dated March 17, 2025, the NEA took two further steps. First, it “rescinded all implementation of the EO.” Ex. 1 (Bolan Decl., Ex. C (Mem. from Mary Anne Carter, NEA Senior Advisor, to NEA Grantmaking Staff (Mar. 17, 2025))). Second, it initiated a “new evaluation of the EO” in light of ongoing judicial decisions construing it and “consistent with applicable law.” *Id.*; *see also* EO §§ 8(a)(i) & (b). The March 17 Memorandum set two deadlines—one for this new administrative process to complete (April 16, 2025), a second to implement the outcome of that process (April 30, 2025). Ex. 1 (Bolan Decl., Ex. C).

Plaintiffs’ preliminary-injunction declarations

Each Plaintiff submitted a declaration concerning their intentions to apply for the NEA’s fiscal-year 2026 GAP cycles. Each previously received NEA funding, some for projects created

by transgender, queer, or nonbinary artists with transgender themes. ECF 2-3 ¶¶ 2, 7 (Martínez Decl. (Mar. 5, 2025)); ECF 2-4 ¶ 7 (Odsess-Rubin Decl. (Mar. 5, 2025)); ECF 2-5 ¶¶ 4-8 (Byrd Decl. (Mar. 5, 2025)); ECF 2-6 ¶¶ 2, 5 (Cachapero Decl. (Mar. 5, 2025)). Each suspects that projects for which it will apply or could have applied would not qualify for GAP funding for fiscal year 2026—if the NEA were to implement the EO—as the projects feature some combination of transgender, nonbinary, and queer themes, artists, and participants. All contend that the EO, if implemented, would frustrate their missions; that they are uncertain about what promoting gender ideology means; and that they (or their members) intend to apply in future years for NEA grants for projects that include transgender themes, artists, and participants. ECF 2-3 ¶¶ 16-17, 21-22; ECF 2-4 ¶¶ 14, 19; ECF 2-5 ¶¶ 18, 21; ECF 2-6 ¶¶ 12, 18-19. None contends, however, that anything that the NEA does or does not do would imperil its continuing existence or prevent it from presenting projects that will feature transgender themes, artists, and participants without NEA funding.

STANDARD OF REVIEW

A plaintiff must first demonstrate that this Court possesses subject-matter jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Courts “presume they lack jurisdiction unless the contrary appears affirmatively from the record.” *Renne v. Geary*, 501 U.S. 312, 316 (1992) (cleaned up). A plaintiff must “make a clear showing that it is likely to establish each element of standing.” *New Jersey v. Trump*, No. 25-1170, slip op. at 7 (1st Cir. Mar. 11, 2025) (quoting *Murthy v. Missouri*, 603 U.S. 42, 58 (2024)) (cleaned up).

“A preliminary injunction is an ‘extraordinary remedy.’ ” *Id.* at 6 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). A plaintiff must establish that: (i) it likely will succeed on the merits; (ii) absent preliminary relief, it likely will suffer irreparable harm; (iii) the balance of the equities tips in its favor; and (iv) an injunction is in the public interest. *Id.* at 6-7 (citing *Winter*, 555 U.S. at 20). The third and fourth factors “merge when the government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). “If the movant fails to demonstrate a

likelihood of success on the merits, the remaining elements are of little consequence.” *Akebia Therapeutics, Inc. v. Azar*, 976 F.3d 86, 92 (1st Cir. 2020).

ARGUMENT

I. Because the Plaintiffs’ claims are not justiciable, the Court should deny the preliminary-injunction motion.

A. Because there is no agency action to challenge, the Plaintiffs lack standing to pursue preliminary relief.

Article III of the Constitution limits the federal courts’ jurisdiction to “cases” and “controversies.” U.S. Const., art. III, § 2. *See also, e.g., Clapper v. Amnesty Int’l*, 568 U.S. 398, 408 (2013) (finding claimants lacked standing). “We have long understood that constitutional phrase to require that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions.” *Carney v. Adams*, 592 U.S. 53, 58 (2020); *see also Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 397 (2024) (“No principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.”).

To prevent the issuance of advisory opinions, a claimant must establish standing. *See, e.g., Clapper*, 568 U.S. at 408. Separation-of-powers principles underlie this requirement “to prevent the judicial process from being used to usurp the powers of the political branches.” *Id.* Courts are “especially rigorous” in assessing standing when they must “decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.” *Id.* (quoting *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997)).

To establish standing, a claimant must show (1) an injury in fact (2) fairly traceable to the contested conduct that (3) a favorable court decision would likely redress. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Injury in fact is the “first and foremost” of standing’s three elements. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (cleaned up). The Plaintiffs alleged three types of harm before the NEA rescinded its implementation of the EO:

- first, suspicion that the EO would disqualify their applications, cause them to lose federal funding, or expose them to compliance penalties based on the possible implementation of

the EO, which they contend would be a viewpoint-based prohibition infringing their First Amendment free-speech rights;

- second, uncertainty about how the EO, if applied, would apply; and
- third, frustration of their organizations' missions and project planning.

E.g., ECF 2-1 at 10-13. None satisfies any of the three traditional standing elements. *See, e.g., Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (“[P]laintiffs must demonstrate standing for each claim that they press . . . and for each form of relief that they seek.”) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)).

None of the Plaintiffs' declarations establish injury in fact.

First, and most importantly, there is simply no agency action that affects the Plaintiffs' ability to compete for a selective GAP award. Absent agency action, the Plaintiffs suffer “no concrete harm” as that absence “does not require them to do anything or to refrain from doing anything.” *Trump v. New York*, 592 U.S. 125, 134 (2020). The mere possibility that a future agency action might be the same as the NEA's now-rescinded implementation of the EO is also insufficient injury as a matter of law. *Id.* at 131 (“Any prediction how the Executive Branch might eventually implement this general statement of policy is no more than conjecture at this time.”) (cleaned up). Moreover, “threatened injury must be certainly impending to constitute injury in fact.” *Clapper*, 568 U.S. at 410 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)); *see also, e.g., Savage v. U.S. Small Bus. Admin.*, 552 F. Supp. 3d 241, 247, 249-50 (D.R.I. 2021) (McElroy, J.) (dismissing declaratory-judgment claim about plaintiff's eligibility for government funding because agency action, in part, was merely “threatened”).

Second, whether the NEA implements the EO or not, the Plaintiffs' First Amendment contentions do not establish injury in fact. Regardless of how the Court might characterize the speech at issue in this case, and even if the NEA were to implement the EO, that would not be enough to establish irreparable harm. A “decision not to subsidize the exercise of a fundamental right does not infringe the right.” *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983)); *see also Clapper*, 568 U.S. at 418 (“Allegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific

present objective harm or a threat of specific future harm.”) (cleaned up); *cf. Regan*, 461 U.S. at 546 (rejecting First Amendment challenge to statute precluding tax subsidy for lobbying activity) (“We again reject the “notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State.’ ”) (quoting *Cammarano v. United States*, 358 U.S. 498, 515 (1959) (Douglas, J., concurring)).

Given the posture of this case, and the uncertainty about the outcome of the NEA’s ongoing administrative proceeding, it is premature for the Court to assess the Plaintiffs’ asserted First Amendment harms further. In any event, Plaintiffs’ First Amendment theory of harm is unlikely to succeed. The NEA’s selective, grantmaking decisions do not create any fora for any private citizens’ exercise of free speech. Instead, the NEA’s decisions about which art projects it selects for awards—and which it does not—constitute a form of government speech, and are therefore not subject to the First Amendment. *See, e.g., Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009) (“The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech.”); *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 208 (2015) (“[A]s a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf.”).

When the government acts as a patron of the arts, the government is speaking, and the First Amendment does not apply. *See, e.g., Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 587-88 (1998) (“[T]he Government may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake.”); *id.* at 598 (Scalia, J., concurring) (“It is the very business of government to favor and disfavor points of view.”); *People for the Ethical Treatment of Animals, Inc. v. Gittens*, 414 F.3d 23, 29, 30-31 (D.C. Cir. 2005) (reversing judgment finding that exclusion of claimant’s submission to publicly funded art display violated First Amendment); *Raven v. Sajet*, 334 F. Supp. 3d 22 (D.D.C. 2018) (dismissing First Amendment claim based on allegations that political animus underlain National Portrait Gallery decision not to hang plaintiff’s portrait of President Trump), *aff’d sub nom.*

Raven v. United States, No. 18-5346, 2019 WL 2562945 (D.C. Cir. May 17, 2019), *cert. denied*, 140 S.Ct. 866 (2020); *id.* at 32 (“[T]he First Amendment simply does not apply to government art selections, no matter how arbitrary.”) (citing *Gittens*, 414 F.3d at 30); *cf. United States v. Am. Library Ass’n*, 539 U.S. 194, 212 (2003) (plurality opinion) (rejecting public libraries’ First Amendment challenge to statute conditioning funding for Internet access on adding filtering software) (“To the extent that libraries wish to offer unfiltered access, they are free to do so without federal assistance”).

Arguments about whether and how the First Amendment might apply to the NEA’s hypothetical decision to implement the EO in some way will require careful consideration of how the law applies to the agency’s concrete actions. Therefore, the appropriate time to develop these and other arguments, if at all, will depend on whether—and if so how—the NEA adopts and implements the EO.

Third, the Plaintiffs’ allegations of regulatory uncertainty—an inevitability of many new policy announcements—also do not establish injury in fact, whether the First Amendment applies to the Plaintiffs’ claims or not. *See Am. Library Ass’n v. Barr*, 956 F.2d 1178, 1193 (D.C. Cir. 1992) (“‘[P]resent deterrence from First Amendment conduct because of the difficulty of determining the application of a regulatory provision to that conduct [will not] by itself support standing.’”) (quoting *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375, 1380 (D.C. Cir. 1984) (Scalia, J.)); *Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 73 (1st Cir. 2004) (affirming denial of preliminary-injunction motion) (“A threat that is either unlikely to materialize or purely theoretical will not do.”); *id.* (“Preliminary injunctions are strong medicine, and they should not issue merely to calm the imaginings of the movant.”). And, to the extent that this regulatory uncertainty allegedly arises from the potentially vague implementation of the EO (again, if implemented at all), that is not an injury when the speech at issue is the government’s selection of works of art. *See, e.g., Finley*, 524 U.S. at 588 (“[W]hen the Government is acting as a patron rather than as sovereign, the consequences of imprecision are not constitutionally severe.”).

Fourth, every Plaintiff alleges that the EO, if implemented by the NEA, would frustrate its mission. *E.g.*, ECF 2-3 ¶ 21; ECF 2-4 ¶¶ 14, 16; ECF 2-5 ¶ 19; ECF 2-6 ¶¶ 3, 17. The Supreme Court rejected this type of injury as supporting standing last term:

[A]n organization may not establish standing simply based on the intensity of the litigant’s interest or because of strong opposition to the government’s conduct, no matter how longstanding the interest and no matter how qualified the organization. A plaintiff must show far more than simply a setback to the organization’s abstract social interests.

Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. 367, 394 (2024) (cleaned up).

Moreover, the Plaintiffs cannot establish an injury in fact by incurring costs in anticipation of some future harm. ECF 2-4 ¶ 9 (risk of shortened planning time); ECF 2-5 ¶¶ 11-13 (same); ECF 2-6 ¶ 16 (diversion of resource to evaluate of EO). *See, e.g., All. for Hippocratic Med.*, 602 U.S. at 394 (“[A]n organization that has not suffered a concrete injury caused by a defendant’s action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant’s action. An organization cannot manufacture its own standing in that way.”); *Clapper*, 568 U.S. at 416 (“Respondents’ contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing . . .”).

The Plaintiffs cannot satisfy either of the two other standing requirements. With or without the EO (and regardless of the April 7 GAP 1 deadline relative to the administrative proceeding the NEA anticipates completing by April 16), all GAP applicants must make difficult choices about what to pitch to the NEA with the hope of securing uncertain, partial funding. *Cf. Clapper*, 568 U.S. at 417 (“Another reason that respondents’ present injuries are not fairly traceable to [the contested law] is that even before [it] was enacted, they had a similar incentive to engage in many of the countermeasures that they are now taking.”). As to RILA and TCG’s members, they have the same incentives to choose a project proposal that they hope the NEA might grant under its “subjective selection” process, *Finley*, 524 U.S. at 590, where the NEA has already encouraged applications on specific topics, ECF 2-2, Ex. 1 at 6-7; *Finley*, 524 U.S. at 588 (“[A]s a

practical matter . . . artists may conform their speech to what they believe to be the decisionmaking criteria in order to acquire funding.”).

Regardless, the NEA has rescinded its implementation of the EO and extended GAP 1’s Part 2 deadline. There is nothing for the Court to redress. The Plaintiffs thus cannot satisfy standing’s third element. *See, e.g., Louisiana v. Biden*, 64 F.4th 674, 678 (5th Cir. 2023) (dismissing appeal; vacating preliminary injunction given plaintiff States’ lack of standing) (“Plaintiffs’ allegations of ‘injury in fact’ rely on a chain of hypotheticals Such injuries . . . flow . . . from potential future regulations, i.e., final rules that are subject to their own legislated avenues of scrutiny, dialogue, and judicial review on an appropriately developed record.”).

B. Because the agency is conducting a new administrative process to determine whether, and how, the EO might apply, the Plaintiffs’ claims are not ripe.

Even if this Court were to conclude that the Plaintiffs have standing, the Court should still deny the motion under the ripeness doctrine. *See, e.g., Downing/Salt Pond Partners, L.P. v. Rhode Island & Providence Plantations*, 643 F.3d 16, 17 (1st Cir.), *cert. denied*, 565 U.S. 977 (2011). “Ripeness is a justiciability doctrine” whose purpose is to prevent “courts from ‘entangling themselves in abstract disagreements over administrative policies’ and from improperly interfering in the administrative decision-making process.” *City of Fall River v. Fed. Energy Regulatory Comm’n*, 507 F.3d 1, 6 (1st Cir. 2007) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)). “The burden to prove ripeness is on the party seeking jurisdiction.” *Labor Relations Div. of Constr. Indus. of Mass., Inc. v. Healey*, 844 F.3d 318, 326 (1st Cir. 2016) (affirming dismissal of pre-enforcement judicial review on ripeness grounds).

Courts apply a two-part test to determine whether a case is ripe for review, and both favor denial of the Plaintiffs’ motion. First, “[a] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998); *see also City of Fall River*, 507 F.3d at 6 (declining to review agency’s conditional project approval for lack of ripeness). Agency action is not ripe for judicial review until an agency has made a final decision. *Abbott Labs.*, 387 U.S. at 149. And, for

an agency review to be final, it must be both (a) “the consummation of the agency’s decisionmaking process,” and (b) a decision “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177 (1997); *Abbott Labs.*, 387 U.S. at 148-49. The NEA rescinded any action to implement the EO; there is now no final agency action.

Without any agency action to review, it is unclear what the Court would be assessing, how, and on what grounds, as well as what relief it could grant. *See, e.g., Broderick v. di Grazia*, 504 F.2d 643, 645 (1st Cir.1974) (action for declaratory judgment, that statement Police Commissioner threatened police officers with due process violation in future administrative proceedings, was not ripe because “[a] court could only guess at how [the statement] might be translated into practice”); *City of Fall River*, 507 F.3d at 6 (“[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”); *Cont’l Air Lines, Inc. v. Civil Aeronautics Bd.*, 522 F.2d 107, 125 (D.C. Cir.1975) (“If the [agency’s] position is likely to be abandoned or modified before it is actually put into effect, then its review wastes the court’s time and interferes with the process by which the agency is attempting to reach a final decision.”); *cf. Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, 79 (1st Cir. 1997) (“Disregarding available administrative processes thrusts parties prematurely into overcrowded courts and weakens an agency’s effectiveness by encouraging end-runs around it.”).

Second, a court must consider the hardship to both parties, but there is no hardship to the Plaintiffs. Should the outcome that the Plaintiffs expect actually occur, they may still challenge the agency’s decisionmaking before this Court. *See City of Fall River*, 507 F.3d at 7; *see also Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726, 734 (1998) (“The [plaintiff] thus will have ample opportunity later to bring its legal challenge at a time when harm is more imminent and more certain.”).

II. Without any agency action, the Plaintiffs are not entitled to any preliminary relief.

Again, regardless of the Rule 65 elements that guide a court's analysis of requests for preliminary relief, the NEA is doing precisely what the Plaintiffs have asked the Court to order the NEA to do, ECF 21 at 34: (a) not require applicants to certify that they will comply with the EO, and (b) not implement the EO. ECF 10 ¶ 8; Ex. 1 (Bolan Decl., Ex. C). It is not clear what relief the Plaintiffs could now lawfully seek and that the Court could now lawfully issue.

Regardless of the question of relief, it is beyond dispute that the Plaintiffs are not entitled to it. The NEA has rescinded the agency action that is the sole basis of the Plaintiffs' pleading and motion, and so the Plaintiffs cannot prevail on the Rule 65 elements necessary to merit preliminary relief.

A. The likely success of the Plaintiffs' claims turns on agency action that the agency has rescinded, compelling denial of their motion.

As this Court recently held,

The APA allows judicial review of “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. An agency action is “final” if: (1) it marks the “‘consummation’ of the agency’s decisionmaking process,” and (2) the action determines rights or obligations or creates legal consequences. *Harper v. Werfel*, 118 F.4th 100, 116 (1st Cir. 2024) (citing *Bennett v. Spear*, 520 U.S. 154, 177, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)).

New York v. Trump, No. 25-CV-39-JJM-PAS, 2025 WL 715621, at *8 (D.R.I. Mar. 6, 2025) (McConnell, C.J.). The only “final” agency action relevant to the EO is the NEA’s decision to rescind it. Otherwise, it has embarked on a new administrative proceeding, whose outcome, grounds, and implementation are uncertain. Because there is no agency decisionmaking for this Court to evaluate, it is difficult to conceive how the Plaintiffs could prevail in challenging agency action under the APA that has not yet occurred.³

³ In *New York v. Trump*, Judge McConnell found that the government’s rescission of a challenged agency action did not obviate the need for a preliminary injunction based on his view that there was direct evidence that the “rescission was in name only and that the substantive effect of the directive carries on.” 2025 WL 715621, at *4 (cleaned up). There is no such evidence here.

The same result follows for the Plaintiffs’ First and Fifth Amendment claims. The only criteria guiding any NEA decisionmaking on any GAP applications are those that predate the EO and that the Supreme Court approved of in *Finley*. That decision addressed both First and Fifth Amendment interests—both in the NEA’s favor. *E.g.*, 524 U.S. at 588. Without any more information about whether and how the NEA might implement the EO, Plaintiffs lack any agency action to challenge under the First or Fifth Amendment beyond NEA’s grantmaking decisions upheld in *Finley*.

B. The Plaintiffs suffer no irreparable harm.

The Plaintiffs cannot establish the merit of claims that depend on agency action that has been rescinded. As a result, the remaining Rule 65 “elements are of little consequence.” *See, e.g., Akebia Therapeutics, Inc. v. Azar*, 976 F.3d 86, 92 (1st Cir. 2020).

Regardless, the Plaintiffs cannot show any harm from the merely possible implementation of the EO. “A tenuous or overly speculative forecast of anticipated harm does not possess the substance required to show irreparable injury.” *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004) (cleaned up). The primary harm that the Plaintiffs point to, now that the NEA has rescinded any action that implements the EO, is their contention that, because the GAP 1 Part 2 deadline on April 7 precedes the April 16 deadline for the agency’s new administrative process, they must apply for projects that are not their first choices. The Plaintiffs argue their First Amendment rights will be chilled as a result.

That alleged harm is not irreparable for three reasons. First, Plaintiffs’ alleged harm is not irreparable, for the same reasons that the Plaintiffs’ have not shown injury in fact to support standing. Even without the EO, the NEA administers a “subjective selection” process, consistent with the authority to “selectively fund” certain activities to the exclusion of others. *Finley*, 524 U.S. at 588; *id.* at 593 (Scalia, J., concurring). And applications, therefore, will inevitably “conform their speech to what they believe to be the decisionmaking criteria in order to acquire funding.” *Id.* at 589 (majority opinion). Thus, the choices that every GAP applicant confronts (even by April 7, 2025) necessarily have uncertain consequences.

Second, what is most practically at stake—the loss of an NEA grant—would not irreparably harm the Plaintiffs. By the NEA’s own calculations, it will reject more than 50 percent of GAP applicants. ECF 2-2, Ex. 1 at 4. Even if an applicant were to receive a grant, the NEA legally cannot be the sole source—of a project’s funding. *See* 20 U.S.C. § 954(e) (stating that a grant “shall not exceed 50 per centum of the total cost of such project or production” subject to otherwise inapplicable exceptions). And even then, many project costs are unallowable (directly or because of activities related to the project). ECF 2-2, Ex. 1 at 13-14.

As a result, with or without the EO, *every* applicant, and not just the Plaintiffs, must plan for the likely denial of their applications, no matter what projects those applications proposed. The anticipated partial loss of a project’s funding from the NEA is not irreparable harm because Plaintiffs are not *entitled* to NEA funding. The same problem applies to the Plaintiffs’ speculations about possible lost time to plan a project or frustrated budget expectations or difficulties securing personnel for projects or waiting five months for possible GAP 2 funding.

Third, as noted above, the First Amendment does not apply to government art selections like the one at issue here. The Plaintiffs’ First Amendment rights are not implicated by their decision of which work of art to submit for government selection, so there are no rights to be chilled.

Other movants have presented far more precarious consequences absent preliminary relief and still failed to persuade this Court that their harm was irreparable. *See, e.g., New England Health Care Employees Union, Dist. 1199, SEIU v. Women & Infants Hosp.*, C.A. No. 15–66 S., 2015 WL 1424402, at *3-*4 (D.R.I. Mar. 27, 2015) (Smith, J.) (denying motion for temporary restraining order after finding anticipated patient diversion and corresponding economic losses, in the absence of order compelling union personnel to work, did not show irreparable harm).

C. The balance of the equities and public interest—which merge where the government is the defendant—weigh against preliminary relief.

The Plaintiffs’ showing on this factor repeats its merits arguments, which necessarily fail given the NEA’s rescission of the sole ground for the Plaintiffs’ motion. Because the NEA’s

grantmaking process, which does not incorporate the EO, is itself constitutional, the public interest weighs against an injunction. *Finley*, 524 U.S. 587-88. Allowing the NEA, moreover, to complete its ongoing administrative review and decide whether and how to implement the EO also are in the public interest and consistent with separation-of-powers principles.

III. The Court should limit any injunctive relief to the Plaintiffs and the NEA only.

Injunctive relief should not provide “a remedy beyond what [is] necessary to provide relief” to injured parties. *Lewis v. Casey*, 518 U.S. 343, 360 (1996). Accordingly, to the extent the Court intends to grant the Plaintiffs’ request for a preliminary injunction, such relief should be narrowly tailored to apply only to the Plaintiffs and the NEA. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.”); *Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring) (“Universal injunctions have little basis in traditional equitable practice.”); *Florida v. Dep’t of Health & Hum. Servs.*, 19 F.4th 1271, 1282 (11th Cir. 2021) (noting that the “appropriate circumstances” for issuing a nationwide injunction “are rare”).

IV. Any injunctive relief should be stayed pending appeal and accompany a bond.

To the extent the Court issues any injunctive relief, the NEA also respectfully requests that such relief be stayed pending the disposition of any appeal that is authorized by the Solicitor General, or at a minimum that such relief be administratively stayed for a period of seven days to allow the United States to seek an emergency, expedited stay from the court of appeals if an appeal is authorized.

The NEA also respectfully requests that any injunctive relief accompany a bond under Federal Rule of Civil Procedure 65(c), which provides that “[t]he court may issue a pre-liminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” A bond is appropriate here given that any preliminary

relief would potentially mandate that the Executive spend money that may not be recouped once distributed.

CONCLUSION

For the preceding reasons, the NEA respectfully asks the Court to deny the Plaintiffs' preliminary injunction motion.

Dated: March 21, 2025

Respectfully submitted,

NATIONAL ENDOWMENT FOR THE ARTS;
MARY ANNE CARTER, in her official capacity as Acting Chair of the National Endowment for the Arts,

By their Attorneys

SARA MIRON BLOOM
Acting United States Attorney

/s/ Kevin Bolan

KEVIN BOLAN

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CERTIFICATE OF SERVICE

I certify that on March 21, 2025, I filed this document and its attachments through the Court's ECF system, thereby electronically serving all parties of record in this action.

/s/ Kevin Bolan

KEVIN BOLAN

Assistant United States Attorney

Ex. 1

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER, THE
THEATER OFFENSIVE, and THEATRE
COMMUNICATIONS GROUP,

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS; MARY ANNE CARTER, in her of-
ficial capacity as Acting Chair of the Na-
tional Endowment for the Arts,

Defendants.

Civil Action
No. 24-cv-79-WES-PAS

DECLARATION OF KEVIN BOLAN

I, Kevin Bolan, declare as follows:

1. I am an Assistant United States Attorney in the U.S. District of Rhode Island and am counsel for the Defendants in this action.

2. I submit this declaration in support of the Defendants' response to the Plaintiffs' motion for preliminary injunction.

3. The attached exhibits are true and accurate copies of documents issued by the National Endowment for the Arts. The outline lettering of the documents below matches their exhibit letter:

a. NEA, Legal Requirements and Assurance of Compliance (Mar. 11, 2025), <https://www.arts.gov/grants/legal-requirements-and-assurance-of-compliance>.

b. NEA, General Terms and Conditions for Federal Financial Assistance Awards to Organizations (Apr. 22, 2024), <https://www.arts.gov/sites/default/files/FY25-GTC-ORGs-11.5.2024.pdf>.

c. Mem. from Mary Anne Carter, NEA Senior Advisor, to NEA Grantmaking Staff (Mar. 17, 2025).

I declare under penalty of perjury that the foregoing is true and correct.

March 21, 2025

/s/ Kevin Bolan

Assistant United States Attorney

Ex. A



[Menu](#)

Legal Requirements and Assurance of Compliance

Legal Requirements

NOTE: This list highlights some of the significant legal requirements that may apply to an applicant or recipient; however, it is not exhaustive. More information regarding these and other legal requirements may be found at [Appendix A of the General Terms & Conditions </grants/manage-your-award>](#), which set forth the National Policy and Other Legal Requirements, Statutes, Regulations, and Executive Orders that Govern Your Award. There may be other applicable legal requirements that are not listed in this document. It is ultimately your responsibility to ensure that you are compliant with all legal, regulatory, and policy requirements applicable to your award.

1. By law, the National Endowment for the Arts may support only those organizations:

- **That are tax-exempt.** Organizations qualifying for this status must meet the following criteria:
 1. No part of net earnings may benefit a private stockholder or individual.
 2. Donations to the organization must be allowable as a charitable contribution under Section 170(c) of the Internal Revenue Code of 1954, as amended.

For further information, go to the Internal Revenue Service's (IRS) website <<http://www.irs.gov>>.

- Who have not had their IRS status revoked. It is your responsibility to ensure that your status is current at the time of the application and throughout the life of your award.

- **That compensate all professional performers and related or supporting professional personnel on National Endowment for the Arts-supported projects at no less than the prevailing minimum compensation.** (This requirement is in accordance with regulations that have been issued by the Secretary of Labor in 29 CFR Part 505 <<http://www.gpo.gov/fdsys/pkg/cfr-1998-title29-vol3/pdf/cfr-1998-title29-vol3-chap-id2.pdf>>. This part does not provide information on specific compensation levels.)
- **That ensure that no part of any National Endowment for the Arts-supported project will be performed under or engaged in working conditions which are unsanitary, hazardous, or dangerous to the health and safety of the employees involved.**

2. **Some legal requirements apply to every applicant. For example:**

- **Compliance with the federal requirements** that are outlined in the Assurance of Compliance below
- **Debarment and Suspension procedures.** The applicant must comply with requirements set forth in Subpart C of 2 CFR 180, as adopted by the National Endowment for the Arts in 2 CFR Part 3254. Failure to comply may result in the debarment or suspension of the recipient, and the National Endowment for the Arts suspending, terminating, and/or recovering the funds. More information on Debarment and Suspension procedures can be found in the GTCs.
- **Federal Debt Status** (OMB Circular A-129
<https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/a129/a-129.pdf>). Processing of applications will be suspended when applicants are delinquent on federal tax or non-tax debts, including judgment liens against property for a debt to the federal government. An organization's debt status is displayed in the System for Award Management (SAM). New awards will not be made if an applicant is still in debt status as of September 1 of the fiscal year listed on this funding opportunity.

- **Labor Standards** (29 CFR Part 505

<<https://www.govinfo.gov/app/details/cfr-2023-title29-vol3/cfr-2023-title29-vol3-part505>>). Recipients must comply with the standards set out in Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts.

- The Drug-Free Workplace Act of 1988

<<https://www.govinfo.gov/content/pkg/uscode-2020-title41/html/uscode-2020-title41-subtitleiv-chap81-sec8103.htm>> (41 U.S.C. 8101 et seq. and 2 CFR Part 3256). The recipient is required to publish a statement regarding its drug-free workplace program as well as to comply with other requirements.

3. Some legal requirements apply depending upon what activity the award is funding. For example:

- If your project activities have the potential to impact any structure that is 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 an historic district, you will be asked to provide additional information about your project or take additional action so that the agency can review and comply with the National Historic Preservation Act <<https://www.achp.gov/protecting-historic-properties>> (NHPA). NHPA also applies to any planning activities that may affect historic properties or districts. The additional agency review must be completed prior to any agency funds being released.
- If your project activities have the potential to impact the environment or environmentally sensitive resources, you will be required to provide information in accordance with the National Environmental Policy Act <<https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>> (NEPA). The additional agency review must be completed prior to any agency funds being released.

- If your project activities include any contract over \$2,000 involving the construction, alteration, or repair of public buildings or public works, the contract must contain a clause setting forth the minimum wages to be paid to laborers and mechanics employed under the contract in accordance with The Davis-Bacon and Related Acts (DBRA). More information on DBRA can be found in the GTCs </grants/manage-your-award> under the “Other National Policies” heading.
- Projects or programs that are determined to be obscene are without artistic merit and shall not be funded. 20 USC 952(j)-(l); 20 USC 954(d),(l).

4. Some legal requirements apply depending upon who the applicant is. For example:

- The Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 et seq.) applies to any organization that controls or possesses Native American cultural items, such as human remains or associated funerary objects and receives Federal funding, even for a purpose unrelated to the Act.

5. In addition, State Arts Agencies must meet the requirements in Section 954(g)(2) of the National Endowment for the Arts' authorizing legislation, which state:

"In order to receive assistance under this subsection in any fiscal year, a State shall submit an application for such grants at such time as shall be specified by the Chairperson and accompany such applications with a plan which the Chairperson finds—

(A) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the "State agency") as the sole agency for the administration of the State plan;

(B) provides that funds paid to the State under this subsection will be expended solely on projects and productions approved by the State agency which carry out one or more of the objectives of subsection (c);

(C) provides that the State agency will make such reports, in such form and containing such information, as the Chairperson may from time to time require, including a description of the progress made toward achieving the goals of the State plan;

(D) provides—

- i. assurances that the State agency has held, after reasonable notice, public meetings in the State to allow all groups of artists, interested organizations, and the public to present views and make recommendations regarding the State plan; and

- ii. a summary of such recommendations and the State agency's response to such recommendations; and

(E) contains--

- i. a description of the level of participation during the most recent preceding year for which information is available by artists, artists' organizations, and arts organizations in projects and productions for which financial assistance is provided under this subsection;
- ii. for the most recent preceding year for which information is available, a description of the extent projects and productions receiving financial assistance from the State arts agency are available to all people and communities in the State; and
- iii. a description of projects and productions receiving financial assistance under this subsection that exist or are being developed to secure wider participation of artists, artists' organizations, and arts organizations identified under clause (i) of this subparagraph or that address the availability of the arts to all people or communities identified under clause (ii) of this subparagraph.

No application may be approved unless the accompanying plan satisfies the requirements specified in this subsection."

Assurance of Compliance

By signing and submitting its application form on Grants.gov, the applicant certifies that it is in compliance with the statutes outlined below and all related National Endowment for the Arts regulations as well as all applicable executive orders, and that it will maintain records and submit the reports that are necessary to determine its compliance.

We may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply with any of these statutes, regulations, or executive orders, it may suspend or terminate the award, and/or recover the funds. The applicant's assurance of compliance is subject to judicial enforcement.

The applicant certifies that it does not discriminate:

- On the grounds of race, color, or national origin, in accordance with **Title VI of the Civil Rights Act of 1964**, as amended (42 U.S.C. 2000d et seq.), implemented by the National Endowment for the Arts at 45 CFR 1110.
- Solely on the grounds of disability, in accordance with **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. 794), as amended, implemented by the National Endowment for the Arts at 45 CFR 1151, and the **Americans with Disabilities Act of 1990** ("ADA"), as amended, (42 U.S.C. 12101 et seq.).

- On the basis of age, in accordance with the **Age Discrimination Act of 1975**, as amended (42 U.S.C. 6101 et seq.), implemented by the National Endowment for the Arts at 45 CFR 1156.
- On the basis of sex, in any education program or activity, in accordance with **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681 et seq.).

In addition, the applicant agrees that, if the applicant is selected and becomes a NEA grant recipient:

- The applicant will comply with all applicable Executive Orders while the award is being administered. Executive orders are posted at [whitehouse.gov/presidential-actions](https://www.whitehouse.gov/presidential-actions).

- The applicant's compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S.

Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code, pursuant to Executive Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, dated January 21, 2025. *PLEASE NOTE: Due to the preliminary injunction issued on February 21, 2025, by the United State District Court for the District of Maryland, Case No. 1:25-cv-00333-ABA, the NEA is not currently requiring any grantee or contractor to make any "certification" or other representation pursuant to Executive Order No. 14173. This term will not apply to your award as long as this preliminary injunction remains in effect.*

- The applicant will not operate any programs promoting “diversity, equity, and inclusion” (DEI) that violate any applicable Federal anti-discrimination laws, in accordance with Executive Order No. 14173. *PLEASE NOTE: Due to the preliminary injunction issued on February 21, 2025, by the United State District Court for the District of Maryland, Case No. 1:25-cv-00333-ABA, the NEA is not currently requiring any grantee or contractor to make any “certification” or other representation pursuant to Executive Order No. 14173. This term will not apply to your award as long as this preliminary injunction remains in effect.*
- The applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government. *PLEASE NOTE: Pending the outcome of litigation in the United States District Court of Rhode Island, Case No.1:25-cv-00079-WES-PAS, the NEA is not currently requiring any grantee to make any "certification" or other representation pursuant to Executive Order 14168.*

The applicant will inform the public that persons who believe they have been discriminated against on the basis of race, color, national origin, disability, sex, or age may file a complaint with the Director of Civil Rights at the National Endowment for the Arts.

The applicant will forward all complaints for investigation and any finding issued by a Federal or state court or by a Federal or state administrative agency to:

Director, NEA Office of Civil Rights

Email: civilrights@arts.gov

The applicant shall maintain records of its compliance and submission for three (3) years. The applicant will compile, maintain and permit access to records as required by applicable regulations, guidelines or other directives.

The applicant must also certify that it will obtain assurances of compliance from all subrecipients and will require all subrecipients of National Endowment for the Arts funds to comply with these requirements.

The United States has the right to seek judicial or administrative enforcement of this assurance.

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400 7th Street, SW, Washington, DC
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Ex. B

November 2024



General Terms and Conditions

for Federal Financial Assistance Awards to Organizations

Incorporating revisions to Title 2 of the Code of Federal Regulations (2 CFR)
for all Federal Financial Assistance Awards issued on or after October 1, 2024
(89 FR 30046 April 22, 2024)

Office of Grants Management

National Endowment for the Arts

400 7th Street, SW

Washington, DC 20506

Telephone (202) 682-5403

grants@arts.govfinalreports@arts.govwww.arts.gov/grants/manage-your-award

Accessibility Accommodations

Individuals who are deaf or hard-of-hearing may e-mail the Office of Grants Management at grants@arts.gov for assistance.

Individuals who do not use conventional print or electronic media may access the information in this document by contacting the Office of Accessibility at accessibility@arts.gov or by phone at (202) 682-5532.

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Important Information Regarding Your National Endowment for the Arts Award

1. Applicability

The *General Terms and Conditions for Federal Financial Assistance Awards to Organizations* (GTCs) apply to grants and cooperative agreements (awards) the National Endowment for the Arts (NEA or the agency) issues to 501(c)(3) nonprofit organizations, institutions of higher education (IHEs), units of state and local government, and federally recognized tribal entities.

- Awards issued under the Partnership Agreement funding opportunity to State Arts Agencies (SAAs) and Regional Arts Organizations (RAOs) are subject to the *General Terms and Conditions for Partnership Agreements*.
- Awards issued under all other NEA funding opportunities for subaward projects to pass-through entities¹ are subject to the *General Terms and Conditions for Pass-Through Entities*.

Contact the NEA Office of Grants Management at grants@arts.gov if you are unsure which *General Terms and Conditions* apply to your award.

Implementation. These GTCs implement Title 2 of the Code of Federal Regulations (2 CFR) including Subtitle A-Office of Management and Budget Guidance for Federal Financial Assistance and Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Part 200 or § 200), last amended on October 2, 2024. You may access the full text of 2 CFR 200 at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I>.

Adoption. The NEA has adopted 2 CFR 200 through regulation at 2 CFR 3255.1.

Additional Statutes and Policies. The GTCs are also based on the NEA's legislation 20 U.S.C. § 954 and 955, along with other federal statutes, regulations, and executive orders that apply to federal financial assistance awards and established NEA policies. All NEA award recipients must be familiar with and comply with applicable requirements.

The NEA endeavors to include pertinent statutes and regulations within the GTCs. In general, more expansive information can be found by reviewing the enumerated citations.

When applicable, your award may also require specific terms and conditions (§ 200.308). Should there be inconsistency between requirements, specific terms and conditions supersede the GTCs. You can

¹ Only State Arts Agencies, Regional Arts Organizations, and designated Local Arts Agencies are eligible to subgrant NEA funds.

find specific terms and conditions for your award (if applicable) in the Documents tab in your award record in REACH, the NEA's electronic grants management system.

2. Your Responsibilities as a Recipient of a Federal Financial Assistance Award

When you accept an NEA award, your organization assumes legal, financial, administrative, and programmatic responsibilities for administering the award in accordance with any provisions included in the award; the statutes, regulations, executive orders and established NEA policies governing federal financial assistance awards; and these GTCs, all of which are hereby incorporated into your award by reference. While the NEA may provide you with reminders regarding award requirements, the absence of receiving such notice does not relieve you of your responsibilities. If you fail to comply with these requirements, the NEA may suspend or terminate your award and recover NEA funding. In addition, the United States has the right to seek judicial enforcement of these obligations.

Acceptance of an NEA Award. Submission of a Payment Request constitutes your agreement to comply with all the terms and conditions of the award.

All NEA award recipients must:

1. Comply with the terms and conditions of your award, including the GTCs, 2 CFR 200, and any specific terms and conditions that apply to the award (§ 200.100.)
2. Maintain an active registration in the System for Award Management (SAM.gov) with current information about your entity at all times during which your entity has an active award or application under consideration (§ 200.25).
3. Ensure the efficient and effective administration of the federal award through sound management practices (§ 200.400(a)).
4. Administer federal funds in a manner consistent with the U.S. Constitution, federal statutes, regulations, and the terms and conditions of your federal award (§ 200.303 (b) and .400).
5. Maintain accounting practices consistent with the cost principles in 2 CFR 200 and that support the accumulation of costs as required by these cost principles, including maintaining adequate documentation to support costs charged to the federal award.
6. Maintain a sound financial management system that records separately within its general accounting system the receipt and disbursement of grant funds and cost sharing contributions and that monitors the expenditure of these funds against the approved award budget (§ 200.302).

7. Have in place written procedures for determining the allowability of costs, the disbursement of federal funds, procurement, conflict of interests, compensation for personal services, leave policies, classification of participant costs, relocation policies, and travel reimbursement for staff on official business. (§ 200.430(g)(7); .112; .318(c); .302, .317-.327; .475)
8. Document the time and effort spent by all employees/staff/personnel on approved project activities (§ 200.430 (g)).
9. Conduct all procurement transactions in an open and free competition and ensure that procurement contracts for more than the simplified acquisition threshold that are not awarded by competitive bids or offers are justified and documented (§ 200.317 through .327).
10. Carry out your project activities as approved by the NEA at the time of award and, if amended, as acknowledged in writing by the Office of Grants Management (§ 200.308).
11. Request written approval from the NEA Office of Grants Management for any changes to your project prior to implementing the changes.
12. Acknowledge the NEA's support in all materials publicizing or resulting from project activities.
13. Submit all financial and performance reports by the due dates as required by the terms and conditions of the award (§ 200.328(d)).
14. Comply with requirements concerning record retention and the federal government's rights of access to records and personnel (§ 200.334 through .338).
15. Have an audit performed that meets the requirements of 2 CFR 200 Subpart F - Audit Requirements whenever you expend \$1,000,000 or more in federal funds during a fiscal year (§ 200.501).

3. Acknowledgment of National Endowment for the Arts Support and Disclaimer

You must prominently acknowledge NEA support in all materials and announcements for your funded project. You can find NEA logos for your use on the Manage Your Award section of the NEA's website at www.arts.gov/grants/manage-your-award.

Most NEA awards support specific projects, therefore, you can only use the NEA's name and logo in relation to your NEA-supported project. Do not advertise the NEA as a general donor to your organization. Do not include the NEA in a list of donors not specific to the supported project or suggest that NEA provides continued support to your organization after the NEA closes out your award.

The NEA reserves the right to change the language of the required acknowledgment of NEA support, as well as the right to disallow the use of the NEA logo and acknowledgment of NEA support.

Language for print and online project materials. A basic requirement is a phrase acknowledging NEA support using the following language: *"This project is supported in part by the National Endowment for the Arts."* The NEA encourages you to also include *"To find out more about how National Endowment for the Arts grants impact individuals and communities, visit www.arts.gov."*

In addition, the NEA encourages you to use NEA's current logo whenever possible to accurately indicate that the NEA is currently supporting your project. You may not alter the NEA logo without written permission from the NEA's Office of Public Affairs.

You may use social media to indicate NEA support of your project using the following language, *"This project is supported in part by the National Endowment for the Arts."* You may also include the NEA in a list of project supporters. On certain social media platforms, you may use **@NEAarts** instead of spelling out the full name of the agency.

Language for radio, television, and streaming audio and/or video broadcast. The NEA requires the following voice-over language: *"This project is supported in part by the National Endowment for the Arts. On the web at arts dot gov."* For television or streaming video broadcast, you must display the current NEA logo and the www.arts.gov web address (URL).

4. Selected Definitions (§ 200.1)

Frequently used terms are summarized below; refer to § 200.1 for additional definitions and detail.

Term	Definition
Assistance Listing	The publicly available listing of federal assistance programs managed and administered by the General Services Administration (GSA) at SAM.gov.
Assistance Listing Number	A unique number assigned to identify an Assistance Listing.
Authorizing Official	The person at the recipient organization who has the authority to bind the organization legally and financially. For recipient organizations (parent organizations) responsible for an approved independent

Term	Definition
	component (child organization), the Authorizing Official must have the authority to bind the parent organization.
Closeout	The process by which the federal agency or pass-through entity determines that all applicable administrative actions and all required work of the federal award have been completed and takes actions as described in § 200.344.
Cognizant Agency for Audit	The federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs.
Cognizant Agency for Indirect Costs	The federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all federal agencies. The cognizant agency for indirect costs is not necessarily the same as the cognizant agency for audit.
Contract	For the purpose of federal financial assistance, a legal instrument by which a recipient or subrecipient conducts procurement transactions under a federal award. For additional information on subrecipient and contractor determinations, see § 200.331.
Cooperative Agreement	A legal instrument of financial assistance between a federal agency and a recipient that, consistent with 31 U.S.C. 6302-6305: (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the federal Government's direct benefit or use; (2) Is distinguished from a grant in that it provides for substantial involvement of the federal agency in carrying out the activity contemplated by the federal award.
Cost Share	The portion of project costs not paid by federal funds. This term includes matching, which refers to required levels of cost share that you must provide to the project.
De Minimis Indirect Cost Rate	Recipients that do not have a current federal negotiated indirect cost rate may elect to charge a de minimis rate of up to 15 percent (15%) of modified total direct costs (MTDC). The recipient is authorized to determine the appropriate rate up to this limit. See § 200.414.
Disallowed Cost	Charges to a federal award that the federal agency or pass-through entity determines to be unallowable in accordance with applicable federal statutes, regulations, the provisions of 2 CFR 200, or the terms and conditions of the federal award.

Term	Definition
Equipment	Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient for financial statement purposes, or \$10,000.
Expenditure	Expenditures means charges made by a recipient to a project or program for which a federal award is received. The charges may be reported on a cash or accrual basis as long as the methodology is disclosed and consistently applied.
Federal Funding Accountability and Transparency Act (P.L. 109-282, 9/26/2006)	The Federal Funding Accountability and Transparency Act (FFATA) requires information about federal awards to be posted on a single, searchable website (www.USASpending.gov) that is open for public access.
Federal Share	The portion of the approved project costs paid using federal (NEA) funds.
Grant or Grant Agreement	A legal instrument of financial assistance between a federal agency and a recipient or between a pass-through entity and a subrecipient, consistent with 31 U.S.C. 6302, 6304. A grant is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the federal agency in carrying out the activity contemplated by the federal award.
Indian Tribe	Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of "Indian Entities Recognized and Eligible to Receive Services" and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.
Indirect Costs	Those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Institutes of higher education (IHE) often use the term facilities and administrative (F&A) cost to refer to indirect costs.

Term	Definition
Modified Total Direct Cost (MTDC)	<p>Indirect cost rate base that consists of all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$50,000 of each subaward (regardless of the period of performance of the subawards under the award).</p> <p>MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs, and the portion of each subaward in excess of \$50,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs and with the approval of the cognizant agency for indirect costs.</p>
Non-federal Entity	Either a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Participant	<p>Generally, an individual participating in or attending program activities under a federal award, such as trainings or conferences, but who is not responsible for implementation of the federal award. Individuals committing effort to the development or delivery of program activities under a federal award such as consultants, project personnel, or staff members of a recipient or subrecipient are not program participants.</p> <p>Examples may include community members attending a community outreach program, members of the public whose perspectives or input are sought as part of a program, students, or conference attendees.</p>
Participant Support Costs	Direct costs that support participants and their involvement in a federal award, such as stipends, subsistence allowances, travel allowances, registration fees, temporary dependent care, and per diem paid directly to or on behalf of participants.
Period of Performance (POP)	The time interval between the start and end date of a federal award. It is the time during which the recipient must perform and complete the work authorized under the federal award. Only costs associated with approved activities incurred during this period and approved administrative closeout costs can be charged to the award.
Personally Identifiable Information (PII)	Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not attached to any single category of information

Term	Definition
	<p>or technology. Instead, it requires a case-by-case assessment of the specific risk that an individual can be identified.</p> <p>Examples of PII include but are not limited to social security numbers; passport numbers; credit card numbers; clearances; bank numbers; biometrics; date and place of birth; mother's maiden name; criminal, medical and financial records; and educational transcripts.</p>
Project Cost	Total allowable costs incurred under a federal award and all cost sharing, including third-party contributions.
Recipient	An entity that receives a federal award directly from a federal agency to carry out an activity under a federal program. The term recipient does not include subrecipients or individuals that are program participants and beneficiaries of the award.
Source Documentation (Financial Management)	Documentation that provides evidence that expenditures allocable to an award were incurred and paid during the approved period of performance. Source Documentation includes receipts, invoices, contracts, copies of cancelled checks, transaction reports, bank statements, charge/debit card statements, and in-kind contribution reports. All source documentation must specifically identify the expenditures.
Supply	All tangible personal property other than those described in the equipment definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes or \$10,000, regardless of the length of its useful life.
System for Award Management (SAM.gov)	Federal repository into which a recipient must provide the information required for the conduct of business as a recipient.
Termination	An action a federal agency takes to discontinue a federal award, in whole or in part, at any time before the planned end date of the period of performance. Termination does not include discontinuing a federal award due to a lack of available funds.
Third-party In-Kind Contributions	The value of services and property donated to the recipient and used to meet cost sharing requirements. Volunteer services furnished by third-party professional and technical personnel, consultants, and other labor may be counted as cost sharing if the service is necessary for the program. Donated property from third parties may include items such as

Term	Definition
	equipment, venue space, office supplies, or workshop and classroom supplies necessary to carry out the NEA-supported project.
Unique Entity Identifier (UEI)	The universal identifier assigned by SAM.gov to uniquely identify an entity.
Unrecovered Indirect Costs	The difference between the amount of indirect costs charged to the federal award and the amount which could have been charged to the federal award under the recipient's Negotiated Indirect Cost Rate Agreement.

5. SAM.gov Required Registration (2 CFR 25)

2 CFR 25 provides guidance on requirements for applicants, recipients, and subrecipients to obtain a unique entity identifier (UEI), as required by the Federal Funding Accountability and Transparency Act (P.L. 109-282, 9/26/2006), and for entities to register in the System for Award Management (SAM.gov) repository for standard information about applicants and recipients. See **APPENDIX B: PART 25 AWARD TERM - SAM.GOV AND UEI REQUIREMENTS** for more information about this term of your award.

NOTICE: You must maintain a current and active registration in SAM.gov until you submit all final reports required under this federal award or receive the final payment, whichever is later.

1. The NEA may not issue a federal award or amend an existing federal award to provide additional federal funds if the entity is not in compliance with the requirements to maintain an active registration with SAM.gov. **The NEA will withdraw any funding offers and reject the application(s) of any applicant that has an inactive SAM.gov registration as of September 1 of the current federal fiscal year (2 CFR 25.205).**
2. The NEA may not issue a federal award or amend an existing federal award to provide additional federal funds when SAM.gov shows that the entity has delinquent federal debt. **The NEA will withdraw any funding offers and will reject the application(s) of any applicant that has a YES in the Delinquent Federal Debt Indicator in their SAM.gov registration as of September 1 of the current federal fiscal year (OMB Circular A-129).**
3. The NEA will not release award funds if the entity is not in compliance with the requirement to maintain an active registration with SAM.gov or has delinquent federal debt. **Failure to resolve the delinquent federal debt or obtain an active SAM registration within 150 days after the end date of the period of performance for the award will result in de-obligation of any funds**

remaining on the award (2 CFR 25.205). See **Closeout, Adjustments, and Continuing Responsibilities** for more information.

6. Mandatory Disclosures (§ 200.113)

Applicants and recipients of a federal award must promptly disclose whenever, in connection with the federal award, it has credible evidence of the commission of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

Recipients are required to report matters related to recipient integrity and performance in accordance with Appendix XII to Part 200. You are also required to provide this as a written disclosure to the NEA Office of Grants Management at grants@arts.gov and the NEA Office of Inspector General at oig@arts.gov.

Failure to make required disclosures can result in any of the remedies described in **Section 20. Remedies for Noncompliance and Termination**. (See also § 200.339, 2 CFR Part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

7. Conflicts of Interest (§ 200.112 and .318(c)) and Related Mandatory Disclosures (§ 200.113)

You must have written conflict of interest policies that ensure all employees, board members, officers, or agents engaged in the administration of federal grants and cooperative agreements, avoid conflicts of interest. Your standards of conduct must provide for disciplinary actions to be applied for violations by employees, officers, agents, or board members.

You must maintain written standards of conduct covering conflicts of interest and governing the actions of your employees engaged in the selection, award, and administration of contracts supported by the federal award. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the NEA award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of

the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors.

If your organization has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

Recipients are required to disclose to us any actual or potential conflicts, including but not limited to the following:

- **NEA Panelist.** Any individuals who serve as NEA panelists cannot review an application from an organization with which they are affiliated as an employee, board member, officer, or agent. If a panelist later becomes associated with an award project that they reviewed, then that individual cannot act as an Authorizing Official for that award. This prohibition is in effect throughout the entire period of performance for the award. Recipients must disclose any affiliations with an NEA panelist to the as soon as they become aware of the affiliation.
- **National Council on the Arts member.** Recipients must disclose whether any of their personnel are National Council on the Arts Members. Once an Authorizing Official, Project Director, or Grants Administrator for an applicant or recipient organization is nominated to the National Council on the Arts, that individual must recuse themselves from deliberating or voting on that organization's application and award actions, and from submitting payment requests on that organization's behalf. Recipients must disclose any affiliations with National Council on the Arts member to the NEA as soon as they become aware of the affiliation.

8. Whistleblower Protection (§ 200.217)

An employee of a recipient must not be discharged, demoted, or otherwise discriminated against as reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract or grant.

Recipients must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712.

9. Statutory and National Policy Requirements (§ 200.300 and .209)

Recipients are responsible for complying with all requirements of the federal award, including those based on the following:

Statutory Policy Requirements (§ 200.300(a)). Recipients are required to ensure that federal funding is expended, and programs are in full accordance with the U.S. Constitution, applicable federal statutes, and regulations—including provisions protecting free speech, religious liberty, public welfare, and the environment, and those prohibiting discrimination, including those in general appropriations provisions.

NEA's Enabling Legislation. Recipients are required to execute their projects in accordance with the NEA's enabling legislation that requires "artistic excellence and artistic merit." Projects or programs that are determined to be obscene are without artistic merit and shall not be funded. 20 U.S.C. 952(j)-(l); 20 U.S.C. 954(d) and (l).

Financial Assistance General Certifications and Representations (§ 200.209 and .415). Applicants for and recipients of federal financial assistance are required to complete and agree to the Financial Assistance Certifications in SAM.gov when registering or renewing a registration. The Representations and Certifications (Reps and Certs) are a common set of certifications and representations required by federal statutes or regulations in accordance with the guidance under 2 CFR 200. Applicants and recipients must keep these certifications and representations current, accurate, and complete as part of their SAM.gov entity registration.

Final Financial Report and other Financial Reports Certifications (§ 200.415). Only an official at the recipient organization who is authorized to legally bind the organization may submit financial reports, including the Final Financial Report. Electronic submission of a financial report through the REACH system constitutes signing the certification. The official must agree to the following certification:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

See **Appendix A** for more details regarding these statutory and national policy requirements. See **17: Performance and Financial Reporting** for additional information.

10. Financial Management (§ 200.302) and Internal Controls (§ 200.303)

Financial Management

The recipient's financial management system, including records documenting compliance with federal statutes, regulations, and the terms and conditions of your NEA award must be sufficient to allow for the preparation of reports and to track project expenditures to verify that the award funds and required cost share funds were used in accordance with the NEA's legislation, federal statutes, regulations, and the terms and conditions of the award. Required reports include payment requests, annual financial reports (if applicable), the Final Financial Report, and any other report indicated in the terms and conditions of your award.

Financial management systems must meet standards described in **§ 200.302**, including:

- Identification of all federal awards received and expended and the federal programs under which they were received. Federal program and federal award identification must include, as applicable, the Assistance Listings title and number, federal award identification number, year the federal award was issued, and name of the federal agency.
 - You can find these award details on the **Official Notice of Action** document in the Documents tab for the award in REACH.
- Accurate, current, and complete identification of federal award data, financial results, and the ability to provide source documentation upon request.
- All records must be supported by source documentation.
- Written procedures for determining the allowability of costs and for managing payments.

In addition, recipients that are units of State governments must expend and account for the federal award in accordance with State laws and procedures for expending and accounting for the State's funds.

Internal Controls

Recipients must establish, document, and maintain effective internal controls over the federal award and provide reasonable assurance that the recipient is managing the award in compliance with federal statutes, regulations, and the terms and conditions of the federal award. See recommended compliance guidance regarding documenting internal controls at **§ 200.303**. Recipients must take prompt action when instances of noncompliance are identified.

Cybersecurity. Recipients must take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the federal agency designates as sensitive or other

information the recipient considers sensitive and is consistent with applicable federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

11. Cash Management Standards / Federal Payment (§ 200.305)

Recipients must have written procedures to minimize the time elapsing between the receipt of federal award funds and the disbursement of federal award funds to avoid having excessive federal funds on hand. The recipient must make timely payments to contractors in accordance with the contract provisions.

The NEA will withhold payments if:

- The recipient has failed to comply with the terms and conditions of the federal award,
- The recipient is delinquent in a debt to the United States, or
- The recipient notifies the NEA that it is withholding payments from contractors to assure satisfactory completion of work on the award.

Payment Requests. Requests for advance payment are limited to a recipient's immediate cash requirements in carrying out the purpose of your approved project and are not to exceed anticipated expenditures for a 30-day period (§ 200.305(b)(1)). This 30-day period starts with the date you submit the payment request in REACH. Any funds requested from the NEA and not liquidated within 30 days must be returned to us. See the *How to Manage Your NEA Award Handbook* for instructions on returning funds.

Payments to States. For recipients that are units of State government, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies."

12. Cost Sharing (20 U.S.C. 954(e) and § 200.306) and Program Income (§ 200.307)

Unless otherwise stated in your award documents, NEA funds cannot exceed 50 percent of the total cost of the NEA-supported project (20 U.S.C. 954(e)). NEA funding requires a one-to-one or "dollar for dollar" cost share. This required cost share refers to the portion of project costs not paid by federal funds, and may include your own funds, donations, non-federal grants, and other revenue.

The NEA notifies you of the required cost share for your award in the Cost Share section of the Terms and Conditions document on the Documents Tab for the award in REACH.

Important:

- All costs in your project budget, whether supported by NEA funds or the cost share, must conform to all the requirements of the federal award and must be verifiable in your records. This includes costs covered by voluntary committed cost share.
- You cannot include costs from your NEA-funded project budget in other federal awards, including other NEA awards.
- All costs included in your NEA-funded project budget must be necessary and reasonable for achieving the objectives of your NEA award and allowable per the NEA's legislation, relevant NEA program guidelines, and the §200 Cost Principles.

Use of Unrecovered Indirect Costs as Cost Share (§ 200.306(c)). Unrecovered indirect costs may only be included as cost share for an award if the recipient has a current Negotiated Indirect Cost Rate Agreement (NICRA) with a federal agency. See **Section 4: Selected Definitions** for more information.

Use of Program Income (§ 200.307). Income earned during the period of performance that results from activities supported through a NEA award is program income. These earnings can include, but are not limited to, income from fees for services, admission fees, or the use or rental of property.

The NEA allows program income to be used as part of the cost share for allowable expenses of the NEA-supported project, or for other eligible projects in the arts conducted by your organization (§ 200.307(b) and (b)(3)).

IN-KIND COST SHARE

A recipient may use in-kind third-party (i.e., not your own) contributions of services and property to meet the required cost share for the award. While you may use in-kind contributions to meet the required cost share for an award, the NEA cannot reimburse you for goods or services provided to you as an in-kind contribution (§ 200.306(d)-(j)).

All third-party in-kind contributions must also be included as direct costs in the project budget so the NEA can determine their allowability and necessity to the project. All third-party in-kind contributions of services, goods, property, or space must be documented in your financial management system, be supported by source documentation, and have their fair market value determined as described below.

Donated property. The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality. Donated property from third parties may include items such as equipment, office supplies, or workshop and classroom supplies. The assessed value of donated property included as cost sharing must not exceed the property's fair market value at the time of the donation.

Volunteer services furnished by third-party professional and technical personnel, consultants, and other labor. These services may be counted as cost sharing if the service is necessary for the NEA project. Rates for third-party volunteer services must be consistent with those paid for similar work by the recipient. When the required skills are not found in the recipient's workforce, rates must be consistent with those paid for similar work in the labor market where the recipient competes for the services involved. Fringe benefits that are allowable, allocable, and reasonable may be included in the valuation.

Volunteer services furnished by employees of a third-party organization. When a third-party organization furnishes the services of an employee, these services must be valued at no greater than the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

Ineligible Cost Share Sources (§ 200.306 and .403). Recipients may not use these sources to meet the cost share requirement for an award:

- **Other federal funds.** This includes other NEA funds (§ 200.306(b)(5)). This also includes federal funds that have been sub-awarded or disbursed to you from a State Arts Agency, Regional Arts Organization, or another organization. Consult your other funders to determine if their funding to you includes federal funds.
- Cash funding and/or third-party **in-kind contributions used as cost share for another NEA award** or another federal program/award (§ 200.306(b)(2) and .403(f)).
- Contributions or gifts to your organization that are **restricted** and cannot be used to support the project. This includes gifts (bequeathed or otherwise) which are not available to your organization for use during the award's period of performance.

13. General Procurement Standards (§ 200.317-.327)

States and Tribal Entity Recipients. A State or Indian Tribe must follow the same policies and procedures that you use for procurements with non-federal funds. If such policies and procedures do not exist, then you must follow the procurement standards in § 200.318 through .327. In addition to your own policies and procedures, States or Indian Tribes must also comply with the procurement standards in § 200.321 through .323, and .327.

All Other Recipients. All other recipients and subrecipients must follow the procurement standards in § 200.318 through .327.

Documented procurement procedures. You must maintain and use documented procedures for procurement transactions under a federal award, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in § 200.317 through .327. The NEA may ask to review your procurement policy, plans, and other documents such as requests for proposals and independent cost estimates.

Oversight of contractors. Recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See § 200.501(h) for more information.

Avoidance of unnecessary or duplicative items. Your procedures must avoid the acquisition of unnecessary or duplicative items. You should consider consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, you should conduct an analysis comparing leasing and purchasing equipment to determine the most economical approach.

Responsible contractors. You must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. You must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

Procurement records. You must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

Settlement of contractual and administrative issues. You are responsible for the settlement of all contractual and administrative issues arising out of your procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

Competition (§ 200.319). You must conduct all procurement transactions under an NEA award in a manner that provides full and open competition and is consistent with the standards of § 200.319 and .320. You are encouraged to consider small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms for procurement contracts under a federal award. (§ 200.321(a))

Procurement methods (§ 200.320). There are three types of procurement methods:

1. Informal procurement methods for micro-purchases and simplified acquisitions,
2. Formal procurement methods through sealed bids or proposals, and
3. Noncompetitive procurement methods.

For any of these methods, you must maintain and use documented procurement procedures, consistent with the standards of § 200.317 through .320.

You can access the Federal Acquisition Regulation (FAR) at

<https://www.acquisition.gov/browse/index/far> for more information and for procurement thresholds.

Note that the thresholds are subject to change, so you should use the thresholds in place at the time of your procurement action.

Informal Procurement Methods. You may use informal procurement methods when the value of the procurement transaction under the federal award does not exceed the simplified acquisition threshold. Recipients may also establish a lower threshold. You may be able to take advantage of the flexibilities found by using informal procurement methods such as:

- **Micro-purchases.** (§ 200.320(a)(1)) and the Federal Acquisition Regulation (FAR) at 48 CFR Part 2, subpart 2.1). For the micro-purchase threshold, you may self-certify a threshold up to \$50,000 on an annual basis and must maintain and make documentation available to the NEA and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation.

You may award micro-purchases without soliciting competitive price or rate quotations if you consider the price reasonable based on research, experience, purchase history, or other information; and maintain documents to support this conclusion.

- **Simplified acquisitions** (§ 200.320(a)(2)) and the FAR at 48 CFR part 2, subpart 2.1.) You may use this method when the aggregate dollar amount of your procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold in the FAR. You are responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and your documented procurement procedures, which may be lower than, but must not exceed, the threshold established in the FAR.

Formal procurement methods. You are required to use formal procurement methods when the value of the procurement transaction under an NEA award exceeds the simplified acquisition threshold of your organization. Formal procurement methods are competitive and require public notice. Refer to § 200.320 (b) for formal procurement methods.

Noncompetitive procurement. You may only use the noncompetitive procurement method if one of the following circumstances applies:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold.
- The procurement transaction can only be fulfilled by a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation.
- You request in writing to use a noncompetitive procurement method, and the NEA provides written approval. The NEA may request further information in support of any such request.
- After soliciting several sources, competition is determined inadequate.

Buy American Act (41 U.S.C. 8301-8305) and Domestic Preference for Procurement (§ 200.322)

You are strongly encouraged to purchase American-made equipment in accordance with the Buy American Act. Furthermore, you should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. (§ 200.322(a))

14. Cost Principles (Part 200 – Subpart E)

The allowability of costs under your NEA award is determined in accordance with the NEA's legislation and appropriate NEA program guidelines or program solicitation, and the cost principles. All costs

included in your approved project budget and on payment requests and financial reports for the award, whether supported with NEA funds or cost share funds, must be:

- Necessary and reasonable for the performance of the federal award (§ 200.403(a)).
- Allocable and in conformance with these cost principles and as set forth in the award (§ 200.403(b)).
- Consistent with written policies and procedures that apply uniformly to both federally financed and other activities of the recipient (§ 200.403(c)).
- Accorded consistent treatment as either a direct or indirect cost (§ 200.403(d)).
- Determined in accordance with generally accepted accounting principles (GAAP) (§ 200.403(e)).
- Not included as a cost or used to meet cost sharing requirements of any other federally financed program (§ 200.403(f)).
- Adequately documented for reporting and audit purposes (§ 200.403(g)).
- Incurred during the approved period of performance and budget period (§ 200.403(h)).

Where the determination of cost allowability differs, the NEA program guidelines, GTCs, and any specific terms and conditions, as appropriate, take precedence over § 200.

UNALLOWABLE COSTS

You should refer to the program guidelines applicable to your award for the full list of unallowable costs and activities. The following is a selection of common costs that are unallowable based on NEA legislation and policy:

- Awards to individuals or organizations to honor or recognize achievement (P.L. 111–88, October 30, 2009, Sec. 438 (2)).
 - Stipends and fees for individuals or organizations who provide services or goods to you under the federal award are allowable.
- Cash reserves and endowments (NEA guidelines).
- Construction, purchase, or renovation costs of facilities or land (NEA guidelines).
 - Costs associated with design fees, preparing space for an exhibit, installation or de-installation of art, and community planning are allowable.
- Costs to bring a project into compliance with federal award requirements (NEA guidelines).
- Compensation to foreign nationals, including travel to or from foreign countries, when those expenditures are not in compliance with regulations issued by the [U.S. Treasury Department Office of Foreign Assets Control](#) (OFAC Sanctions/NEA guidelines).
- Subgranting or re-granting (P.L. 111–88, October 30, 2009, Sec. 438 (2)).
- Gifts and prizes, including cash prizes as well as other items with monetary value (e.g., electronic devices, gift certificates). (NEA guidelines)

- The purchase of vehicles such as cars, vans, buses, trucks, and sport utility vehicles. (NEA guidelines).
- Visa costs paid to the U.S. Government (P.L. 109-54, Title III General Provisions, Sec. 406).
 - Costs associated with preparing material for submission for a visa is allowable.

ALLOWABILITY OF COMMON COSTS (§ 200.420 through 476)

Pre-Award Costs. The NEA does not approve costs incurred prior to the start date of the period of performance. Do not include these costs in your project budget or subsequent financial reports for your award (§ 200.308(g)(1)).

Administrative Closeout Costs. Administrative closeout costs may be included in your project budget and incurred until the due date of the final report(s). You must liquidate these costs prior to the due date of the final report(s) (§ 200.472). Allowable costs include salaries of personnel preparing final reports, costs associated with the disposition of equipment and property, and related indirect costs.

Participant support costs (§200.456). Participant support costs must be documented in your policies and procedures and treated consistently. Allowable costs include stipends, subsistence allowances, travel allowances, registration fees, temporary dependent care and per diem paid directly to or on behalf of program participants participating in or attending program activities under a federal award such as trainings or conferences, but who are not committing effort to the development or delivery of program activities under the award.

- Consultants, project personnel, and staff members of a recipient organization are not program participants.
- Direct costs that support participants' temporary dependent care needs (dependent is defined in 26 U.S.C. 152) to participate in or attend a program activity under an NEA award are allowable, as long as the classification of items as participant support costs are documented in the recipient's written policies and procedures and treated consistently across all federal awards.

Conferences (§ 200.432). A conference is an event whose primary purpose is dissemination of technical information beyond the recipient. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed to minimize costs to the award. Allowable costs include the rental of facilities, speakers' fees, attendance fees, costs of meals and non-alcoholic refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the federal award. This includes the costs of identifying and providing locally available dependent-care resources for program participants as needed. Refer to **Section 15: Travel** for more information.

- Costs associated with social activities and entertainment activities at a conference such as closing dinners or receptions are unallowable. Entertainment, gifts, and prizes are also unallowable.

Contingency provisions (§ 200.433). Contingency provisions are estimates of future costs associated with events/conditions that may occur and which are indeterminable at the time a project budget is submitted. You may include contingency amounts for specific items of cost if the amount is estimated using broadly accepted cost estimating methodologies and specified in award budget (e.g., production contingency). To be allowable, these amounts must comply with the cost principles, be necessary and reasonable for the accomplishment of project objectives and be verifiable from your records.

- Contingency amounts for major project scope changes, unforeseen risks, or extraordinary events are unallowable and cannot be included in the project budget.

Entertainment (§ 200.438). Costs associated with amusement, diversion, and social activities are unallowable. Activities such as receptions, parties, galas, dinners, and other community social gatherings are unallowable. This includes costs such as catering, gifts, and gift cards, as well as costs for the planning, staffing, and supplies for the activities. Generally, this also includes activities at venues such as bars, wineries, and breweries where the consumption of alcohol/social activity is the primary purpose of the venue (NEA guidelines).

- Alcoholic beverages are unallowable.

Fundraising (§ 200.442). A percentage of salaries and fringe benefits for development or fundraising staff, or fees to contractors, to raise funds used as cost share for the NEA project during the period of performance are allowable. Costs related to development/fundraising staff time and effort spent managing the NEA award are also allowable.

- Costs of fundraising to benefit the general operations of the recipient are unallowable. This may include costs related to financial campaigns, endowment drives, solicitation of gifts and bequests, or similar expenses incurred to raise capital or obtain contributions.
- Costs for events or other activities that are only open to donors are also unallowable.

Rental costs of real property for home office workspace (§ 200.465(f)). Rental of any property owned by any individuals or entities affiliated with the recipient, including commercial or residential real estate, for purposes such as a home office is unallowable.

Publication and printing costs (§ 200.461) Costs related to the development and production of items as part of the approved NEA project activity (e.g., publishing books or exhibition catalogues, or making recordings or films for distribution) and incurred during the period of performance are allowable. (§ 200.461)

Selling and marketing costs (NEA guidelines, § 200.467, § 200.421(e)(3)).

Costs of selling and marketing any products or services of the recipient are unallowable. This includes costs of goods for resale such as the sale of concessions, promotional merchandise, food and/or beverages, T-shirts or other clothing, artwork, or other items for resale. This includes items sold via online or virtual sales/shops and at art markets. It also includes any staffing, technology, or facilities costs related to retail activities.

Prohibited telecommunications and video surveillance services and equipment (§ 200.216 and .471; P. L. 115-232, section 889). You may not buy or obtain, nor extend or renew a contract for, covered telecommunications and video surveillance services and equipment that is prohibited by P. L. 115-232, section 889.

INDIRECT COSTS (§ 200.414)

Recipients may claim indirect costs based on the following:

- **Negotiated Indirect Cost Rate Agreement (NICRA).** A current and appropriate NICRA negotiated with your federal cognizant agency; or,
- **De Minimis Rate.** A recipient that does not have a current NICRA (including provisional rate) may elect to charge a de minimis rate of up to 15% of modified total direct costs (MTDC) in their project budget.
 - When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both.
 - The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, you must use the de minimis rate for all federal awards for which you elect to charge indirect costs until you request and receive a negotiated rate (§ 200.414(f)).

Research Indirect Cost Rates. If you are claiming indirect costs under a NICRA, indirect cost rates applicable to research generally can only be used in project budgets for the NEA's Office of Research & Analysis (ORA) awards. You must use rates applicable to other activities for most NEA awards. Refer to the NEA guidelines applicable to your program, taking into account your own institutional guidance.

You cannot claim both direct overhead/administrative costs and indirect costs in your NEA project budget.

Resources. More information about indirect costs for a NEA award can be found in the *How to Manage Your NEA Award Handbook* and the *Indirect Cost Guide* on the NEA's website.

15. Travel (§ 200.475 and 41 CFR 301-10)

Travel costs include transportation, lodging, subsistence, and related items incurred by the recipient's employees who are in travel status on official business attributable to work under a federal award. You may charge these costs on an actual cost basis, on a per diem or mileage basis, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip. The method used must be consistent with those normally allowed in like circumstances in the recipient's other activities and in accordance with your established written policies.

For travel costs you charge to the NEA award, source documentation must justify that participation of the individual is necessary for the federal award, and that the costs are reasonable and consistent with your established written policy.

Commercial Air Travel (§ 200.475(e)). Airfare costs, whether domestic or foreign, in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable, except when such accommodations would:

- Require circuitous routing.
- Require travel during unreasonable hours.
- Excessively prolonged travel.
- Result in additional costs that would offset the transportation savings; or
- Offer accommodations not reasonably adequate for the traveler's medical needs.

You must justify and document these conditions on a case-by-case basis for the use of first-class or business-class airfare to be allowable in such cases.

Fly America Act (41 CFR 301-10.131 through .143). You are required to follow the provisions of the Fly America Act (49 U.S.C. 40118). All air travel and cargo transport services funded by NEA funds or cost share funds must use a U.S. flag air carrier or a foreign airline under an air transport agreement (codeshare agreement) with the United States when these services are available. To comply with Fly

America regulations, you must purchase the flight via the U.S. airline's designator and flight number if the flight is shared between a U.S. and a foreign airline.

There are some exceptions to the Fly America Act, see 41 CFR 301-10.135 through .138. If you do use a foreign airline, you must provide the NEA with a certification, including a justification as to why your travel met one of the exceptions. Ticket cost, convenience, or traveler preference are not exceptions to the Fly America Act. Additional information may be requested, if necessary.

Foreign Travel. Foreign travel is any travel outside the United States, its territories, and possessions. For foreign travel not originally identified and approved in your award budget, you must request prior written approval from the Office of Grants Management before travel is undertaken.

16. Changes in Your Project: Amendments (§ 200.308)

You are required to conduct your project consistent with the application and proposal that the NEA approved for funding. The approved budget for your NEA award summarizes the financial aspects of the project or program as approved during the federal award process. It includes the federal share of project costs and non-federal cost share.

NOTICE

The NEA Office of Grants Management is the only office with the authority to issue or amend an NEA award. Written and/or verbal approval of proposed changes to an award from any other NEA office does not constitute an approved change to the award.

The NEA considers all amendment/change requests on a case-by-case basis, and approval is not guaranteed. Until you receive written approval from the Office of Grants Management, you may only incur costs consistent with the terms and conditions of the award in effect at the time of your request. You can find detailed information about how to request changes to your award in the *How to Manage Your NEA Award Handbook* on the NEA website.

The NEA has the right to request additional information, such as updates on specific project activities, including a revised budget or an itemized list of actual expenditures, as needed. If your organization is undergoing an audit by the NEA Inspector General's office, the NEA Office of Grants Management will review any amendment requests to the award(s) in question in conjunction with the audit resolution process.

CHANGES THAT REQUIRE PRIOR WRITTEN APPROVAL

You must request prior written approval from the Office of Grants Management for the following changes to your approved award:

Project scope changes (§ 200.308(f)(1)). These include changes to the approved project activities, focus of the project's content, significant changes in targeted participants, and changes in the breadth or impact of projects. Scope changes also include:

- Changes in artists or key partners, if you identified them as confirmed artists or partners in your application or approved project budget.
 - You must submit a short biography for each new proposed artist along with your change request.
 - Festival artist substitutions do not require a scope change unless you are making a change to the festival's headline artists.
- Changes to your project activities, including outdoor activities and activities that cause a ground disturbance, that may impact historic properties or the environment.
 - You must complete and submit the NHPA/NEPA Questionnaire along with your change request.
- Changes in the primary partner for Our Town awards or other NEA funding opportunities which require primary partners.
- Changes in key personnel identified by name or position in Research Grants in the Arts, Research Labs, or other awards managed by the NEA Office of Research & Analysis (ORA). For these awards, you must also notify the NEA if there is a disengagement from the project for more than three months, or a 25% reduction in time and effort devoted to the award over the course of the period of performance, by the approved project director or principal investigator.

Budget revisions (§ 200.308(b)(c)(f) and § 200.407). These include:

- Budget changes due to a significant change in the scope of the NEA-supported project.
- Adding permanent equipment.
- Adding foreign travel.
- Adding indirect costs allowable under a Negotiated Indirect Cost Rate Agreement (NICRA) or the de minimis rate.

Pre-Award Costs. The NEA does not approve costs incurred prior to the start date of the period of performance. Do not include these costs in your project budget or subsequent financial reports for your award. (§ 200.308(g)(1))

Period of performance changes/time extensions. If additional time is needed to complete your approved project activities, you may request a change to the period of performance, including a new start date (this date can be no earlier than the earliest allowable start date per the NEA's guidelines) and/or an extension to the end date. All requests for no-cost time extensions should be submitted as soon as you are aware of the need for additional time (§ 200.308(f)(10)).

Final report extensions. If you completed all project activities and incurred all approved costs within your period of performance, but need more time to prepare your final reports, you may request an extension to the due date for your required reports. (§ 200.344 (b))

- You must request a final report extension if you are submitting a payment request with your final reports and your entity's SAM registration is expired or if your SAM registration shows you have delinquent federal debt subject to offset. See the *How to Manage Your NEA Award Handbook* for additional information.

CHANGES THAT DO NOT REQUIRE PRIOR WRITTEN APPROVAL

Project scope changes, including:

- Changes in your organizational management/project administration, unless specified in your award document.
 - This does not apply to Research awards.
 - If there are significant changes to the leadership or senior staff of your organization and/or the project director, you must submit a personnel update. Refer to the *How to Manage your NEA Award Handbook* for details.
- Changes in artists, participants, or project partners not identified as committed/confirmed in the approved project.
- Addition or removal of auxiliary programming provided the activity is allowable and it does not impact the overall project scope.

Budget revisions, including:

- Transfers among previously approved direct cost line items.
 - This does not include transferring funds for foreign travel.
- Elimination of an allowable project cost that does not affect the scope of the award.
- Replacement of in-kind cost share with cash cost share if the source of the new cash cost share is allowable.

Terminating/Declining an Award. You may decide to terminate or withdraw from the award. Please see the *How to Manage Your NEA Award Handbook* for instructions and contact us at grants@arts.gov.

17. Performance and Financial Reporting (§ 200.328 through 344)

Refer to the *How to Manage Your NEA Award Handbook* and the [Manage Your Award](#) section of the NEA website for more information on preparing and submitting your required payment progress report, annual financial and performance reports (if applicable), and final reports specific to your award.

Payment Progress Report (20 U.S.C. 954(j)). A progress report is required with your payment request once the cumulative amount of NEA funds requested exceeds two-thirds of the NEA award amount. This information is reported on the payment request form and must be approved before the NEA can release any funds exceeding two-thirds of the NEA award amount. The progress report must include a description of award-supported activities completed since the award's period of performance start date and those activities scheduled for the remainder of the period of performance.

Annual Financial Report (§ 200.328(b)). You must submit a financial report no less than annually. The required reporting dates will be indicated on the Forms & Reports tab in REACH.

- For awards with a period of performance of **12 months or less**, the Final Federal Financial Report submitted with your final reports will meet this requirement.
- For awards with a period of performance **longer than 12 months**, you must submit an Annual Financial Report no later than 90 days after each 12-month reporting period.
 - Example: An award with a period of performance from January 1, 2025, to December 31, 2026, will have an Annual Financial Report due by March 31, 2026.
- The NEA may waive this requirement upon receipt of an acceptable payment request showing actual expenditures, including cost share funds, during the reporting period.

Annual Performance Progress Report (§ 200.328(c)). You must submit a performance progress report no less than annually. The required reporting dates will be indicated on the Forms & Reports tab in REACH.

- For awards with a period of performance of **12 months or less**, the Final Descriptive Report submitted with your final reports will meet this requirement.
- For awards with a period of performance **longer than 12 months**, you must submit the Annual Performance Progress Report no later than 90 days after each 12-month reporting period.

Example: An award with a period of performance from January 1, 2025, to December 31, 2026, will have an Annual Performance Progress Report due by March 31, 2026.

- The NEA may waive this requirement upon receipt of an acceptable Payment Progress Report during the reporting period.

Specific Reporting Requirements (§ 200.208). The NEA may require you to submit certain information before award funds are released. This information may include but is not limited to verification of compliance with NEPA/NHPA requirements, a signed contract, in-kind documentation, an itemized list of actual expenditures to date, receipts and invoices, or quarterly reports. In general, there will be a specific term and condition indicating these additional award requirements in your award documents, when applicable.

Final Reports (§ 200.328, .339 and .344). To close out your award you must submit the following reports no later than 120 days after the period of performance end date:

- **Final Descriptive Report** (FDR) that provides us with information on the performance of your award activities and associated data,
- **Final Financial Report** (FFR),
- **Geographic Location of Project Activities Report** and,
- Product, if identified on the Report Schedule document and tab in REACH.

Monitoring and Reporting Program Performance (§ 200.329 (b- c)). You are responsible for oversight of your NEA award. The approved project is expected to be completed by the end date of the period of performance. The goals and performance of the project will be measured and evaluated against the approved project activities as well as the requirements described in the NEA guidelines for your award.

You must monitor your project activities under the NEA award to ensure you are compliant with all requirements and meeting performance expectations. (§ 200.329(a))

Significant Developments (§ 200.329(e)). When a significant development that could impact your award occurs during the period of performance, you must immediately notify the NEA via REACH Message in the award record or at grants@arts.gov. Significant developments include problems, delays, or adverse conditions which will impact your ability to complete the project and meet the objectives of the award. When reporting significant developments, you must include plans to correct the issues or request a change to the scope, time, or budget of your award.

Failure to Submit Required Reports (§ 200.344(h) and (i)). You are required to submit all final reports within 120 days from the end date of the period of performance, or by the extended due date as approved in writing by the Office of Grants Management.

There are severe consequences if you do not submit your final reports by the deadline, including:

- Failure to submit acceptable final reports for any award(s) renders you ineligible to receive NEA funding for five (5) years following the final report due date of the award(s) or until the delinquent final reports are submitted and accepted, whichever occurs first.
- Failure to submit acceptable final reports will also affect the NEA's ability to release payments on any of your other open awards.
- The NEA may also pursue other enforcement actions per § 200.339 and .344(i).

Administrative Closeout and De-obligation. If final reports are still overdue 150 days after the end of your award's period of performance, any funds remaining on the award will be de-obligated by the NEA and no longer available to you. This means you will not be able to submit payment requests to draw down these funds. This 150-day deadline is known as the Delinquency Deadline date. The NEA will also close out your award.

- If a final report extension was approved prior to the Delinquency Deadline date, you must submit acceptable final reports by the extended due date, or any remaining award funds will be de-obligated.

Material Failure to Comply. If you do not submit all required final reports within one year of the approved period of performance end date, the NEA must report your material failure to comply with the terms and conditions of the award to SAM.gov. (§ 200.340(a)(c)).

18. Property Standards: Use and Disposition (§ 200.310 through 316)

Artwork. Property may include commissioned, purchased, or fabricated artwork(s) approved under the NEA award. It is your responsibility for maintaining and updating property records when there is a change in the status of the property (§ 200.313 (d)).

Equipment (§ 200.1) includes tangible, nonexpendable, personal property having a useful life of more than one (1) year and a per unit cost that equals or exceeds the lesser of the capitalization level established by your organization, or \$10,000. The NEA must approve equipment costs in your NEA project budget.

Disposition of Artwork and Equipment (§ 200.313(e) and (e)(1)). Unless otherwise specified, you will have title to artwork and equipment commissioned, purchased, or fabricated under the award, without further obligation to the federal government, if it will be used for activities similar to those approved by the NEA. One example of similar activity is selling the artwork to another museum or visual art center with the intention that it will be available to the public. It may not be de-accessioned to a private collector where it would no longer be on view to the public.

Equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further obligation to the NEA.

Supplies (§ 200.314). If there is a residual inventory of unused supplies exceeding \$10,000 in total aggregate value, including computing devices purchased for \$10,000 or less per unit, you may retain them without further obligation to the federal government, provided that they will be used for activities similar to those approved by the NEA. (See Supply under **Definitions** for more information.)

Intangible Property (§ 200.315). You may copyright any material that is subject to copyright and was developed, or for which ownership was acquired, under the NEA award during the period of performance. For procedural information, visit the U.S. Copyright Office at www.copyright.gov.

The NEA reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use work, as well as data, produced under a federal award for federal government purposes. The NEA also has the right to authorize others to do the same (§ 200.315 (b), (d), and (e)).

The NEA strongly recommends that any publication that results from an NEA award be catalogued by the Cataloging in Publication Program of the Library of Congress before final printing. This method of cataloging enables libraries to acquire and process books quickly. Publishers that are ineligible for this program may be eligible for the Library's Preassigned Control Number Program. Entering these titles in a national bibliographic database leads to greater dissemination of publications. For procedural information, visit the Library of Congress at <http://www.loc.gov/publish/cip/>.

19. Record Retention (§ 200.334) and Access

You must retain financial records, supporting documents, statistical records, and all other recipient records pertinent to a federal award for a period of three (3) years from the date of submission of the Final Financial Report (FFR). Exceptions to this three-year period include if litigation, claim, or audit is started before the expiration of the three-year period, or if the NEA notifies you in writing to extend the retention period.

Methods for collection, transmission, and storage of information (§ 200.336). When practicable, the NEA and the recipient must collect, transmit, and store federal award information in open and machine-readable formats. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a computer system.

You do not need to create and retain paper copies when original records are electronic and cannot be altered. In addition, you may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

Standards for Documentation of Personnel Expenses (§ 200.430(g)). Charges to federal awards for salaries and wages must be based on records that accurately reflect the work performed. The records must comply with your organization's internal controls and established accounting policies. Records must support these costs for both the federal funds and cost share requirements. Personnel activity reports or equivalent documentation may be requested if your records do not meet the standards in § 200.430(g)(8).

Equipment. You must retain records for equipment for three (3) years after final disposition (§ 200.334(c)).

ACCESS TO FEDERAL AWARD INFORMATION (§ 200.337 and .338)

Recipient records. The NEA, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives must have the right of access to any records of the recipient pertinent to the federal award to perform audits, execute site visits, or for any other official use. This right also includes timely and reasonable access to the recipient's personnel for the purpose of interview and discussion related to such documents or the federal award in general.

Restrictions on public access to records. The NEA may not place restrictions on the recipient that limit public access to the records of the recipient or subrecipient pertinent to an NEA award, except for protected personally identifiable information (PII) or other sensitive information when NEA can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act ([5 U.S.C. 552](#)) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the NEA.

Freedom of Information Act (FOIA). The Freedom of Information Act ([5 U.S.C. 552](#)) does not apply to records that remain under the recipient's control except as required by [§ 200.315](#) (Intangible Property). Unless required by federal, State, local, or tribal law, recipients are not required to permit public access to their records. The recipient's records provided to the NEA generally will be subject to FOIA and applicable exemptions.

Disclosure Notice. The NEA may share a copy of award applications and/or related materials submitted to the NEA by applicants, with the public or other third parties where required or permitted by law. (§ 200.339 through .343)

20. Remedies for Noncompliance and Termination (§ 200.339 and .340)

Remedies (§ 200.339). If you fail to comply with the US Constitution, federal statutes, regulations, or the terms and conditions of your award, the NEA may impose additional specific conditions as described in § 200.208. If the NEA determines that noncompliance cannot be remedied by imposing additional conditions, the agency may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily withhold cash payments pending correction of the deficiency, or more severe enforcement action (§ 200.339(a)).
- Disallow costs for all or part of the activity associated with your noncompliance (§ 200.339(b)).
- Suspend or terminate the NEA award in part or in its entirety (§ 200.339(c)).
- Initiate suspension or debarment proceedings as authorized under 2 CFR 180 and our regulations at 2 CFR 32.3254 (§ 200.339(d)).
- Withhold further new NEA awards or award renewals (§ 200.339(e)).
- Take other legally available remedies (§ 200.339(f)).

Termination (§ 200.340 (a)). A termination occurs during the award's period of performance. The NEA award may be terminated in part or in its entirety as follows:

1. By the NEA, if you fail to comply with the terms and conditions of the federal award.
2. By the NEA, with the consent of the recipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated.
3. By the recipient, upon sending the NEA a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the NEA determines that the remaining portion of the federal award will not accomplish the purposes for which the award was made, the NEA may terminate the award in its entirety.
4. By the NEA, pursuant to the terms and conditions of the federal award, including, to the extent authorized by law, if an award no longer meets the program goals or agency priorities.
5. By the NEA, when the recipient is determined to be in violation of the requirement in paragraph (g) of Section 106 of the Trafficking Victims Protection Act of 2000 (TVPA) as amended (22 U.S.C. § 7104(g)). Termination may occur as described in **Appendix C: 2 CFR Part 175, Award Term for Trafficking in Persons**.

If the NEA terminates the award prior to the end of the period of performance for your material failure to comply with the terms and conditions, the agency will report the termination in SAM.gov and USASpending (§ 200.340(c) and .341(c)). The information will be available in these systems for 5 years from the date of termination (§ 200.341(b)(2)). You can object or challenge the decision. (§ 200.340(c)(1) and .342)

Government-wide suspension and debarment will follow a process in conjunction with the NEA Office of Inspector General. (2 CFR Part 180 - OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement – Subpart F)

Notification of termination requirement (§ 200.341). The NEA must provide written notice of termination to the recipient. The written notice of termination should include the reasons for termination, the effective date, and the portion of the NEA award to be terminated, if applicable.

Termination provisions (§ 200.211 and .208). Termination provisions may be included in the specific terms and conditions for an award; a notification of intent by the NEA to terminate, or other options. (§ 200.211(c)(v) and .208) The NEA reserves the right to take additional actions (§ 200.339 and .208) such as:

- Requiring you to return a portion or all the award funds.
- Requesting that you remove acknowledgement of NEA support.
- Recommending government-wide suspension.

- Taking other legally available remedies.

The NEA will notify you of such actions and give you an opportunity to provide information and come into compliance. (§ 200.342)

21. Closeout, Adjustments, and Continuing Responsibilities (§ 200.344 and .345)

The NEA must close out the federal award when it determines that all administrative actions and required work of the award have been completed. If you fail to complete the necessary administrative actions or the required work for an award by the Delinquency Deadline, the NEA must proceed with closeout based on the information available.

During the closeout process, the NEA reviews submitted final reports and other items to determine if all applicable administrative actions and all required work of the award have been completed in an acceptable manner and in accordance with the terms and conditions of the award.

You must liquidate all financial obligations incurred under the NEA award no later than 120 calendar days after the conclusion of the period of performance. You must also promptly refund any unobligated funds that the NEA paid and that are not authorized to be retained. See OMB Circular A-129 and § 200.346. To return NEA funds, follow the instructions in the *How to Manage Your NEA Award Handbook*.

The closeout of a federal award does not affect any of the following:

- The NEA's right to disallow costs and recover funds on the basis of a later audit or review.
 - However, the NEA must determine whether to disallow costs and notify you within the record retention period.
- Your requirement to return funds or your right to receive any remaining and available funds as a result of review or corrections.
- The NEA's ability to make financial adjustments to a previously closed award.
- Audit requirements if you must have a Single or Program-Specific Audit (§ 200 Subpart F).
- Property management and disposition requirements in § 200.310 through .316.
- Records retention as required in § 200.334 through .337.

22. Single Audit Requirements (§ 200.501)

A non-federal entity that expends \$1,000,000 or more in federal awards during the non-federal entity's fiscal year must have a single or program-specific audit conducted for that year. The \$1,000,000 threshold is the aggregate of funds from all federal sources.

If your non-federal entity meets or exceeds this threshold, a percentage of Single Audits costs may be included in your NEA award budget. Otherwise, audit costs are unallowable (§ 200.425).

A non-Federal entity that expends less than \$1,000,000 in federal awards during its fiscal year is exempt from federal audit requirements for that year. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the NEA and the Government Accountability Office (GAO).

If you have questions about Single Audit requirements, contact the NEA Office of Inspector General at (202) 682-5402 or oig@arts.gov.

APPENDIX A

NATIONAL POLICY AND OTHER LEGAL REQUIREMENTS, STATUTES, AND REGULATIONS THAT GOVERN YOUR AWARD

You must ensure that you implement the funded project in full accordance with the US Constitution, federal law, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, and the environment, and those prohibiting discrimination (§ 200.300).

As a registrant with SAM.gov, in most cases, you have already self-certified to your compliance with these policies and legal requirements through 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 U.S.C, 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:

Title VI of the Civil Rights Act of 1964, as amended, and implemented by the National Endowment for the Arts at 45 CFR 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 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.arts.gov/about/foia/library.

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 U.S.C 1681 et seq.).

Your NEA-approved project cannot unlawfully discriminate based on sexual orientation or gender identity, consistent with the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

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 U.S.C 6101 et seq.).

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 U.S.C 12101-12213).

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 U.S.C 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.

You must designate a staff member to serve as a 504 Coordinator and a Section 504 self-evaluation must be on file at your organization. To help your organization evaluate its programs, activities, and facilities to ensure full compliance with Section 504 accessibility requirements, the NEA's Office of Civil Rights has a *Section 504 Self Evaluation Workbook* available on the www.arts.gov website. The completed Section 504 self-evaluation workbook or similar compliance and supporting documentation must be kept on file for a period of three (3) years from the date the final Federal Financial Report (FFR) is filed and be made available to the public and the NEA upon request. The NEA may request the 504 workbook or your compliance documents in various instances including an Inspector General audit and/or civil rights investigation.

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. You may download this handbook and other resources from the NEA website at www.arts.gov. If you have questions, contact the Office of Accessibility at accessibility@arts.gov or (202) 682-5532.

2. Environmental and Historic Preservation Policies

The National Environmental Policy Act of 1969, as amended (NEPA), applies to any federal funds that would support an activity that may have environmental implications. The NEA may ask you to respond to specific questions or provide additional information in accordance with NEPA. If there are environmental implications, the NEA 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 U.S.C. Sec. 4332.

The National Historic Preservation Act of 1966, as amended (NHPA), 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. The NEA 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. NEA review must be completed prior to any award funds being released. You may be asked to provide additional information on your project to ensure compliance with NHPA at any time during your award's period of performance (16 U.S.C. 470).

3. Other National Policies

Debarment and Suspension. 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. There are circumstances under which the NEA may receive information concerning your fitness to carry out a project and administer federal funds, such as:

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

In these circumstances, the NEA may need to act quickly to protect the interest of the government by suspending your funding while investigating the specific facts. The NEA's suspension actions may be coordinated with other federal agencies that have an interest in the NEA's findings. A suspension may result in your debarment from receiving federal funding government-wide for up to three (3) years.

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 a record of the sites where work is performed under this award including the full 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 U.S.C 701 et seq. and 45 CFR 1155).

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

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 U.S.C 1913).

Lobbying (§ 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.

Certification Regarding Lobbying to Obtain Awards. Section 319 of Public Law 101-121, codified at 31 U.S.C. 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 must 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 by a recipient of federal funds) is, however, not required. In addition, the law exempts from definition of lobbying certain professional and technical services by applicants and awardees.

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.

You can find information about the laborers and projects that fall under DBRA on the U.S Department of Labor's website at www.dol.gov. 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).

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 this Act (25 U.S.C. 3001 et seq.). For more information see 43 CFR 10 - Native American Graves Protection and Repatriation Regulations at <https://www.ecfr.gov/>.

If your project includes Native American human remains, funerary objects, sacred objects, and/or objects of cultural patrimony, per the Native American Graves Protection and Repatriation Act (NAGPRA) of November 16, 1990, you are required to:

- Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items,
- Make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items, and

- Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains or cultural items.

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 www.ed.gov and the Library of Congress website at www.loc.gov.

Prohibition on use of funds to ACORN or its subsidiaries. No NEA funds or cost share funds expended for your NEA project may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries (P.L. 111-88 Sec. 427).

APPENDIX B

PART 25 AWARD TERM - SAM.GOV AND UEI REQUIREMENTS

Definitions. For the purposes of this award term:

- **System for Award Management (SAM)** means the federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM website (www.SAM.gov).
- **Unique Entity Identifier (UEI)** means the universal identifier assigned by SAM to uniquely identify an entity.
- **Entity** is defined at 2 CFR 25.400 and includes all of the following types as defined in § 200.1:
 - Non-federal entity;
 - Foreign organization;
 - Foreign public entity;
 - Domestic for-profit organization; and
 - Federal agency.
- **Subaward** has the meaning given in § 200.1.
- **Subrecipient** has the meaning given in § 200.1.

Requirement for SAM Registration. Unless exempt from this requirement under 2 CFR 25.110, the recipient must maintain a current and active registration in SAM. The recipient's registration must always be current and active until the recipient submits all final reports required under this federal award or receives the final payment, whichever is later. The recipient must review and update its information in SAM at least annually from the date of its initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the recipient's immediate and highest-level owner and subsidiaries and providing information about the recipient's predecessors that have received a federal award or contract within the last three years.

Requirement for Unique Entity Identifier (UEI). If the recipient is authorized to make subawards under this federal award, the recipient must notify potential subrecipients that no entity may receive a subaward until the entity has provided its UEI to the recipient; and the recipient must not make a subaward to an entity unless the entity has provided its UEI to the recipient. Subrecipients are not required to complete full registration in SAM to obtain a UEI.

APPENDIX C

PART 175 AWARD TERM - TRAFFICKING IN PERSONS

Note: *The language of this award term is included in, and mandated by, 2 CFR 200. "Severe forms of trafficking in persons" is a term defined by law at 22 U.S.C. 7102(11) as : "(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."*

I. Trafficking in Persons

(a) Provisions applicable to a recipient that is a private entity.

(1) Under this award, the recipient, its employees, subrecipients under this award, and subrecipient's employees must not engage in:

- (i) Severe forms of trafficking in persons;
- (ii) The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;
- (iii) The use of forced labor in the performance of this award or any subaward; or
- (iv) Acts that directly support or advance trafficking in persons, including the following acts:

- (A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
- (B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

- (1) Exempted from the requirement to provide or pay for such return transportation by the federal department or agency providing or entering into the grant or cooperative agreement; or

- (2) The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

- (C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

- (D) Charging recruited employees a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(2) The federal agency may unilaterally terminate this award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if any private entity under this award:

- (i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or
- (ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this this appendix through conduct that is either:

- (A) Associated with the performance under this award; or
- (B) Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by the NEA at 2 CFR 32.3254

(b) *Provision applicable to a recipient other than a private entity.*

(1) The federal agency may unilaterally terminate this award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if a subrecipient that is a private entity under this award:

- (i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or
- (ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this appendix through conduct that is either:

- (A) Associated with the performance under this award; or
- (B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by the NEA at 2 CFR 32.3254.

(c) *Provisions applicable to any recipient.*

(1) The recipient must inform the NEA and the NEA Inspector General immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a)(1) of this appendix.

(2) The federal agency's right to unilaterally terminate this award as described in paragraphs (a)(2) or (b)(1) of this appendix:

- (i) Implements the requirements of 22 U.S.C. 78, and
- (ii) Is in addition to all other remedies for noncompliance that are available to the federal agency under this award.

(3) The recipient must include the requirements of paragraph (a)(1) of this award term in any subaward it makes to a private entity.

(4) If applicable, the recipient must also comply with the compliance plan and certification requirements in 2 CFR 175.105(b).

(d) Definitions. For purposes of this award term:

Employee means either:

(1) An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or

(2) Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing requirements.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in § 200.1.

The terms “severe forms of trafficking in persons,” “commercial sex act,” “sex trafficking,” “Abuse or threatened abuse of law or legal process,” “coercion,” “debt bondage,” and “involuntary servitude” have the meanings given at section 103 of the TVPA, as amended ([22 U.S.C. 7102](#)).

Ex. C

MEMORANDUM

From: Mary Anne Carter, Senior Advisor
To: NEA Grantmaking Staff
RE: EO 14168: *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*
Date: March 17, 2025

Dear NEA Grantmaking Staff:

This memorandum concerns EO 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (“the EO”) as that EO applies to the NEA’s grantmaking activities.

I am writing to inform all staff that the NEA has rescinded all implementation of the EO, as it applies to the NEA’s grantmaking activities. Any prior statements the NEA has made concerning any provisions of the EO that apply to its grantmaking are null and void.

To the extent that the NEA has evaluated any part of any grant applications on or since February 6, 2025 based on the EO, we are rescinding those evaluations and will reconsider those applications at the appropriate time, once the administrative process described below is complete.

The NEA is initiating a new evaluation of the EO in accordance with the Administrative Procedure Act, sec. 5 U.S.C. § 551 *et seq.* We intend to address:

1. How, in particular, recent judicial activity, including but not limited to court orders that do not apply to the NEA but that have preliminarily enjoined certain EO provisions concerning other federal government entities, e.g., *Washington v. Trump*, No. 2:25-cv-00244-LK, 2025 WL 659057, at *27-*28 (W.D. Wash. Feb. 28, 2025) (enjoining defendants’ application of EO 14,168 §§ 3(e), (g) to plaintiff States); Mem. Op. (ECF 115) & Order (ECF 116), *PFLAG, Inc. v. Trump*, No. 25-cv-337-BAH (D. Md. Mar. 4, 2025) (enjoining defendants’ application of EO 14,168 § 3(g) nationwide) affect our implementation of this order, if at all.
2. The potential implementation of the EO as to the NEA’s grantmaking activities subject to §§ 8(a)(i) and (b) of the EO—that is, subject to “the authority granted by law to an executive department or agency, or the head thereof” and “consistent with applicable law”—including 20 U.S.C. § 951 *et seq.*

The NEA will not implement the EO at any grant evaluation stage during the current pending grant cycles, and any grants cycles in the future, unless and until such a time that the agency's process of deliberating and considering this EO has completed.

The NEA will not require any applicant for any agency funds to certify their compliance with the EO during this time.

This direction should not be understood to impair the authority of the NEA to award, fund, terminate, or cancel grants at any stage in the grant lifecycle for reasons unrelated to the EO, consistent with applicable law.

This new consideration and evaluation process will complete by April 16, 2025 and the agency will implement and make public the final decision resulting from that process by April 30, 2025.

As a result of this reconsideration, the March Council meeting will be rescheduled to a time this process concludes. We will announce that date shortly.

Sincerely,

A handwritten signature in black ink that reads "Mary Anne Carter". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Mary Anne Carter
Senior Advisor