

AMERICAN RESCUE PLAN: SUBGRANTING PROGRAM

Specific Terms and Conditions

The Jersey City Arts Council (JCAC) is serving as a pass-through entity for American Rescue Plan (ARP) federal funding from the National Endowment for the Arts. When using ARP funds that are subawarded, local nonprofit arts organizations **must** comply with mandates outlined below.

1. COST SHARE

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

2. ALLOWABLE COSTS (Guidelines)

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

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

Allowable costs for subgranted ARP funds are limited to:

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

3. UNALLOWABLE COSTS (Guidelines, 2CFR 200, NEA Establishing Legislation)

ARP funds cannot be used for:

- "Artist relief" programs where the funding is intended to alleviate financial hardship (i.e., rent or food assistance to individuals) and does not require the artist to undertake work.

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

4. ADDITIONAL DEFINITIONS (2 CFR 299 or the NEA)

Select items pertaining to subawards are defined and summarized below.

Federal Share 2 CFR 200 The portion of the award’s costs, including administrative or programmatic subaward costs, that are paid by federal funds.

Term	Citation	Definition
Pass-through entity	2 CFR 200	A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. Note: This includes all Local Arts Agencies (such as JCAC) who issue subawards using NEA ARP funds.

Recipient cost share or match	NEA Guidelines, P.L. 108-108, Nov. 10, 2003 Arts Endowment GTCs	Non-federal funds that are used to support additional costs for the project. The NEA ARP awards are non-matching. They do not require cost share.
Subaward	2 CFR 200	An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out a project or activity identified as part of a federal award. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
Subrecipient	2 CFR 200	A non-federal entity that receives a subaward from a pass-through entity to carry out a project or activity identified with the federal program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. Note: As a Local Arts Agencies, JCAC's awardees are "subrecipients."

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

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

- The JCAC must abide by, or implement, all of the items below if making subawards with NEA funds.
- Only State Arts Agencies, Regional Arts Organizations, and Local Arts Agencies are considered subrecipients eligible to subgrant NEA funds at any level. No other entities may subgrant NEA funds.

It is important for potential applicants to understand the requirements outlined below and are prepared to comply if they are selected for a subaward.

(A) FEDERAL REGULATIONS AND POLICY REQUIREMENTS

There are federal regulations and policy requirements that potential applicants must review and be prepared to comply if they are selected for a subaward. See **APPENDIX C** of this document for information regarding regulations, Executive Orders, and national policy requirements that are applicable to all federal awards. These include requirements that prohibit discrimination, ensure accessibility of all facilities and programs funded with federal monies, provide for the protection of environmental and historic resources, and more.

(B) ELIGIBLE SUBRECIPIENTS

Organizations: Per JCAC’s guidelines, only 501(c)(3) nonprofit arts and culture organizations based in Jersey City, NJ are eligible to receive funds.

NOTICE: For-profit entities and fiscal sponsors are not eligible subrecipients.

(C) UNIQUE ENTITY IDENTIFIER (UEI)

JCAC cannot make a subaward with federal funds to an eligible organization (entity) without a unique entity identifier through [SAM.gov](https://sam.gov). If you do not currently have a UEI, you can register and find more information at SAM.gov.

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

ATTENTION: In April 2022, the federal government transitioned away from the use of the DUNS Number and toward the new SAM.gov Unique Entity ID as the primary means of entity identification for federal awards government-wide. For more information regarding the transition to the SAM UEI visit the Federal Service Desk's Help for the Transition from UEI (DUNS) to UEI (SAM) at https://www.fsd.gov/gsafsd_sp?id=gsafsd_kb_articles&sys_id=6b8149b2db2e7c10060d5425f39619a8.

(D) REVIEW OF RISK

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

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

To comply with this requirement, JCAC must verify that the organization to receive subaward is not excluded or disqualified from doing business with the federal government.

(E) MONITORING

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

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

(F) TERMS AND CONDITIONS

JCAC will provide subrecipients Terms and Conditions for their subaward that outline all requirements for managing their subaward.

These Terms and Conditions are in addition to all of the Federal requirements that "flow down" to the subaward (see **APPENDIX C**).

(G) RECORD RETENTION AND ACCESS

Subrecipients must permit JCAC's treasurer access to their records and financial statements as necessary for JCAC to ensure compliance with the federal award requirements (2 CFR 200.332 (a)(5), .334 and .337).

Subrecipients must retain financial records and other supporting documents related to the subaward for a period of three (3) years from the date they submit their final expenditure report to you (2 CFR 200.334).

(M) CLOSEOUT

All subawards made with federal funds must be closed out (including submission and approval of all subrecipients final reports and disbursal of all funds) prior to closing out JCAC's federal award.

APPENDIX A: Required Data Elements for Subaward Notices under 2 CRF 200.332

Pass-through entities are required to provide subrecipients with the following information any time a subaward is made with federal ARP funds. OCA does not need to provide this information in any particular order or format; the important thing is that the subrecipient is aware of the federal source of funding and informed of the applicable award requirements.

The below information will be included in final grant agreements with subrecipients.

2 CFR 200.332	SAMPLE RESPONSE	NOTES
(i) Subrecipient name (which must match the name associated with its unique entity identifier)	<i>Jersey City Symphony</i>	Legal name of the subrecipient; must match the entity's name in their SAM.gov UEI record (on/after April 4, 2022.)
(ii) Subrecipient's unique entity identifier (UEI)	<i>On or after April 4, 2022: Subrecipient's SAM UEI</i>	The subrecipient's UEI; must reflect legal name and current address.
(iii) Federal Award Identification Number (FAIN)	<i>xxxxxxx-66-22</i>	The NEA award number as included on the LAA's Arts Endowment award document.
(iv) Federal Award Date of award to the recipient by the federal agency	<i>November 30, 2021</i>	The award date on the NEA's Official Notice of Action (NOA) for your Federal award.
(v) and (vi) Subaward Period of Performance and Budget Period	<i>July 1, 2022 – May 31, 2023</i>	The start and end dates for the subaward grant period during which expenses must be incurred; must be within the period of performance for the LAA's NEA award.
Total amount of subaward (non-federal and federal , if applicable)	<i>\$15,000</i>	This is the total amount of the subaward to the subrecipient.

(vii) Amount of federal funds obligated by this action by the pass-through entity to the subrecipient	<i>\$15,000</i>	This is the amount of federal funds obligated by you, if any, to the subrecipient for the subaward.
(viii) Total amount of federal funds obligated to the subrecipient by the pass-through entity including the current financial obligation	<i>\$15,000</i>	Usually the same amount as the row above, unless, as the pass-through, you amended the a previously awarded federal subaward with additional federal funds.
2 CFR 200.332	SAMPLE RESPONSE	NOTES
(ix) Total amount of the federal award committed to the subrecipient by the pass-through entity	<i>\$15,000</i>	Total amount of federal funds from your NEA grant that are included in the subaward.

(x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	Purpose: <i>To support subgranting to the nonprofit arts sector in response to and recovery from the COVID-19 pandemic.</i>	The project description included on the NEA's Official Notice of Action (NOA) for your federal award.
(xi) Name of federal awarding agency, pass-through entity, and contact information for awarding official	<ul style="list-style-type: none"> • National Endowment for the Arts • JCAC • MacAdam Smith, jerseycityartscouncil@gmail.com 	The NEA's name, the LAA's name, and name and contact information for the person authorizing the subaward on the LAA's behalf.
(xii) Assistance Listings number and Title (previously the CFDA Number and Name); the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement.	<i>45.024 Promotion of the Arts - Grants to Organizations and Individuals</i>	The NEA's Assistance Listings number and title as provided on the Official Notice of Action for your NEA award.
(xiii) Identification of whether the federal award is Research & Development (R&D)	<i>Yes/No.</i>	Identify whether your NEA award supports Research & Development activities. This information is provided on the Official Notice of Action for your Arts Endowment award. For ARP awards, the answer is No.
(xiv) Indirect cost rate for the federal award (including if the de minimis rate is charged per 2 CFR 200.414)		The indirect cost rate, if any, charged to the approved project budget for your NEA award.
(xv) Indirect cost rate for the subaward (including if the de minimis rate is charged per 2 CFR 200.414)		N/A for JCAC's Subgranting Program.

2 CFR 200.332	SAMPLE RESPONSE	NOTES
All requirements imposed by the pass-through entity on the subrecipient so that the federal award is used in accordance with federal statutes, regulations and the terms and conditions of the federal award.		
Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the federal awarding agency including identification of any required financial and performance reports		Subrecipients must submit their required final reports no later than 45 days from the end of the period of performance for the subaward.

A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part.		
Appropriate terms and conditions concerning closeout of the subaward.		

APPENDIX B: 2 CFR 25 Appendix A Award Term

I. System for Award Management and Universal Identifier Requirements

A. Requirement for System for Award Management

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

B. Requirement for Unique Entity Identifier

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

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

C. Definitions

For purposes of this term:

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

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

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

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

1. Nondiscrimination Policies

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

- a) Title VI of the Civil Rights Act of 1964, as amended, and implemented by the National Endowment for the Arts at 45 USC 1110, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Title VI also extends protection to persons with limited English proficiency (42 USC 2000d et seq.)
- b) As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. You are encouraged to consider the need for language services for LEP persons in conducting your programs and activities. For assistance and information go to www.arts.gov/foia/reading-room/nea-limited-english-proficiency-policy-guidance.
- c) Title IX of the Education Amendments of 1972, as amended, provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance (20 USC 1681 et seq.)
- d) The Age Discrimination Act of 1975, as amended, provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits

of, or be subject to discrimination under any program or activity receiving Federal financial assistance (42 USC 6101 et seq.)

- e) The Americans with Disabilities Act of 1990 (ADA), as amended, prohibits discrimination on the basis of disability in employment (Title I); State and local government services (Title II); and places of public accommodation and commercial facilities (Title III) (42 USC 12101-12213).
- f) Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of his/her disability, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (29 USC 794).

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

Section 504 - Self-Evaluation and Additional Resources

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

2. Environmental and Preservation Policies

- a) The National Environmental Policy Act of 1969, as amended, applies to any Federal funds that would support an activity that may have environmental implications. We may ask you to respond to specific questions or provide additional information in accordance with the Act. If there are environmental implications, we will determine whether a

categorical exclusion may apply; to undertake an environmental assessment; or to issue a "finding of no significant impact," pursuant to applicable regulations and 42 USC Sec. 4332.

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

Other National Policies

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

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

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

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

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

You must maintain on file the place(s) where work is being performed under this award (i.e., street address, city, state, and zip code). You must notify the National Endowment for the Arts

Office of Grants Management of any employee convicted of a violation of a criminal drug statute that occurs in the workplace (41 USC 701 et seq. and 2 CFR Part 3256).

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

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

5.2 Lobbying (2 CFR 200.450) describes the cost of certain influencing activities associated with obtaining

grants, contracts, cooperative agreements, or loans as an unallowable project cost. The regulation generally defines lobbying as conduct intended to influence the outcome of elections or to influence elected officials regarding pending legislation, either directly or through specific lobbying appeals to the public.

5.3 Certification Regarding Lobbying to Obtain Awards. Section 319 of Public Law 101-121, codified at 31 USC 1352, prohibits the use of Federal funds in lobbying members and employees of Congress, as well as employees of Federal agencies, with respect to the award or amendment of any Federal grant, cooperative agreement, contract, or loan. While non-Federal funds may be used for such activities, they may not be included in your project budget, and their use must be disclosed to the awarding Federal agency. Disclosure of lobbying activities by long-term employees (employed or expected to be employed for more than 130 days) is, however, not required. In addition, the law exempts from definition of lobbying certain professional and technical services by applicants and awardees.

6. Davis-Bacon and Related Acts (DBRA), as amended, requires that each contract over \$2,000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works (these activities include, but are not limited to, painting, decorating, altering, remodeling, installing pieces fabricated off-site, and furnishing supplies or equipment for a work-site) must contain a clause setting forth the minimum wages to be paid to laborers and mechanics employed under the contract. Under the provisions of DBRA, contractors or their subcontractors must pay workers who qualify under DBRA no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

Information about the laborers and projects that fall under DBRA can be found in the U.S. Department of Labor's Compliance Guide at <https://www.dol.gov/agencies/whd/government-contracts/construction> . DBRA wage determinations are to be used in accordance with the provisions of Regulations, 29 CFR Part 1, Part 3, and Part 5, and with DOL's Compliance Guide. The provisions of DBRA apply within the 50 states, territories, protectorates, and Native American nations (if the labor is completed by non-tribal laborers).

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

8. U.S. Constitution Education Program. Educational institutions (including but not limited to "local educational agencies" and "institutions of higher education") receiving Federal funds from any agency are required to provide an educational program on the U.S. Constitution on September 17 (P.L. 108-447, Division J, Sec. 111(b)). For more information on how to implement this requirement and suggested resources, see www2.ed.gov/policy/fund/guid/constitutionday and <https://www.loc.gov/extranet/cld/constitution.html>.

9. Prohibition on use of funds to ACORN or its subsidiaries. None of the federal or matching funds expended for your awarded project may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries (P.L. 111-88 Sec. 427).