



NATIONAL
ENDOWMENT
FOR THE
HUMANITIES

GENERAL TERMS AND CONDITIONS FOR GENERAL SUPPORT GRANTS TO STATE HUMANITIES COUNCILS

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Introduction

This document, the *General Terms and Conditions for General Support Grants to State Humanities Councils* replaces the *General Grant Provisions for General Support Grants to State Humanities Councils* that was published in March 2003. It should be noted that these terms and conditions apply **only** to general support grants awarded to the fifty-six state humanities councils by the Federal/State Partnership.

Awards that a state humanities council might receive from other programs of the NEH would be subject to either the *General Terms and Conditions for Awards to Organizations* or the administrative requirements of the NEH Office of Challenge Grants. Because there are significant differences in the requirements set forth in each of these documents, it is important for councils that have received awards from NEH programs other than Federal/State Partnership to be familiar with the specific administrative requirements that apply to each of their NEH awards.

There are numerous changes in this edition:

- **The articles in this document have been rearranged into broad subject headings.**
- **Several article titles have been changed to conform to standard government usage.**
- **A request for one copy of materials produced by council-conducted projects has been added (Article 3).**
- **Several new articles have been added:**
 - CFDA Numbers (Article 22)**
 - Native American Graves Protection and Repatriation Act of 1990 (Article 30)**
 - National Historic Preservation Act of 1966 (Article 31)**
 - Activities Outside the United States (Article 33)**
 - Code of Ethics for Projects Related to Native Americans (Article 36)**
- **Although the requirements themselves have not changed, state councils and their regrantees will no longer certify in writing their compliance with nondiscrimination and some other government-wide requirements (Articles 25, 27, & 28).**
- **The text of 18 U.S.C 1913 has been updated (Article 26)**

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Glossary of Terms

Acquisition Cost	For an item of purchased equipment, this is net invoice unit price of the equipment including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the council's regular accounting practices.
Award	A grant or cooperative agreement.
Cash Contribution	Cash outlays for budgeted program activities which are paid from the council's or grantee's own funds; from monies contributed to the council or grantee by other public agencies and institutions, private organizations, and individuals; and from funds received under agreements with other federal agencies.
Cooperative Agreement	An award of financial assistance that is used to enter into the same kind of relationship as a grant, but that is distinguished from a grant in that it provides for substantial involvement between the federal agency and the recipient in carrying out the activity contemplated by the award.
Cost Sharing	The portion of the costs of a project or program not charged to NEH funds. This would include cash contributions (as defined above) as well as the value of third party in-kind contributions.
Debarment	The ineligibility of a grantee to receive any assistance or benefits from the federal government, either indefinitely or for a specified period of time, based on legal proceedings taken pursuant to agency regulations implementing Executive Order 12549.
Equipment	Tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
Federally Recognized Indian Tribal Government	The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as eligible for special programs and services provided by him through the Bureau of Indian Affairs.
Federal Share	The federal share of real property, equipment or supplies is that

percentage of the property's acquisition costs and any improvement expenditures that was paid with federal funds.

Funding Period	A twelve-month time period (running from November through October) for which the NEH provides general support funding to a state humanities council. Under a biennial grant, there are two one-year funding periods within a four-year grant period. Under a triennial grant, there are three one-year funding periods within a five-year grant period. The final two years of the grant periods are NOT funding periods, but are instead time allowed to close out regrants and to reuse any funds available from the funding periods.
Grant	A legal instrument that provides financial assistance in the form of money or property to an eligible recipient. The term includes cooperative agreements but it does not apply to technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. The term does not include fellowships or other lump sum awards, for which the recipient is not required to provide a financial accounting.
Grant Period	The period established in the grant award during which NEH support begins and ends. All costs related to grant activities must be incurred within the established grant period, and all obligations must be liquidated within 90 days after the ending date of the grant period.
Grantee	The entity to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even when only a particular component of the entity is designated in the grant award document.
In-Kind Contributions	The value of noncash contributions provided by third parties . In-kind contributions may be in the form of charges for real property and equipment or the value of goods and services directly benefiting and specifically identifiable to the project.
Intangible Property	Includes, but is not limited to, trademarks, copyrights, patents and patent applications.
Local Government	A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of government, any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations	The amounts of orders placed, contracts and grants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.
Outlays (Expenditures)	Charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subrecipients, and other payees, and other amounts becoming owed under programs for which no current services or performance are required.
Program Income	Money that is earned or received by a council or a regrantee from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and royalties on patents and copyrights.
Real Property	Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.
Regrant	An award of financial assistance, including cooperative agreements, made by a council to an organization or individual in support of a humanities project that was selected in open competition on the basis of established criteria that are widely known.

Simplified Acquisition Threshold	Currently \$100,000, as fixed at 41 U.S.C. 403 (11).
State	Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments and institutions of higher education and hospitals.
Subaward/Subgrant	An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a council to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. Re-grants and contracts that are funded under a general support grant are examples of subawards.
Subrecipient	The legal entity to which a subaward is made and which is accountable to the council for the use of the funds provided.
Supplies	All personal property, excluding “equipment” and “intangible property” as defined in this glossary.
Suspension	<p>(1) The suspension of a <i>grant</i> is the temporary cancellation of federal sponsorship, including withdrawal of authority to incur expenditures against grant funds, pending corrective action by the grantee, or pending a decision for <i>termination</i> of the grant.</p> <p>(2) The suspension of an <i>individual or organization</i> causes that party to be temporarily ineligible to receive any assistance and benefits from the federal government pending completion of investigation and legal proceedings as prescribed under agency regulations implementing Executive Order 12549. Such actions may lead to <i>debarment</i> of the grantee.</p>
Termination	<p>Cancellation of federal sponsorship of grant activities, including the withdrawal of authority to incur expenditures against previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. “Termination” does not include:</p> <p>(1) withdrawal of funds awarded on the basis of the grantee’s underestimate of the unobligated balance in a prior period;</p> <p>(2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon</p>

determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms and
Conditions of a Grant

All requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Unliquidated
Obligations

For reports prepared on a cash basis, unliquidated obligations mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated Balance

The portion of the funds authorized by the federal agency that has not been obligated by the grantee. The unobligated balance is determined by deducting the cumulative obligations from the cumulative funds authorized.

*General Terms and Conditions for General Support Grants
to State Humanities Councils*

1. Applicability of General Terms and Conditions

These general terms and conditions apply to all **general support grants and annual funding amendments** that the National Endowment for the Humanities has issued to state humanities councils as of November 1, 2005. In accepting a general support grant, a state humanities council assumes the legal responsibility for administering the award in accordance with these general terms and conditions and of complying fully with any special terms and conditions that are included in the grant agreement. Failure to comply with the *General Terms and Conditions for General Support Grants to State Humanities Councils* or the specific terms and conditions of a grant agreement may result in the suspension or termination of the award and the NEH's recovery of grant funds. Should there be any inconsistency between these general terms and conditions and the specific terms and conditions of a grant, the latter will govern.

2. Eligibility for NEH Grant Support

Only those state humanities councils that have currently approved compliance plans are eligible to receive a general support grant from Federal/State Partnership.

Although state humanities councils must be constituted for nonprofit purposes to be eligible to receive NEH funds, a council does not have to be incorporated.

3. Acknowledgment of Support and Disclaimer

Unless advised to the contrary, all materials publicizing or resulting from grant activities shall contain an acknowledgment of NEH support. The acknowledgment shall also include the following statement: "Any views, findings, conclusions or recommendations expressed in this (publication) (program) (exhibition) (website) do not necessarily represent those of the National Endowment for the Humanities."

One copy of all grant products from council-conducted projects should be forwarded to the Federal/State Partnership as soon as they are available.

4. Regrant Activities

Councils are authorized to award regrants (see definition in the "Glossary of Terms") to private nonprofit organizations; institutions of higher education; state, local, and federally recognized Indian tribal governments; institutions of the federal government; groups of persons that form an association to carry out a project; and individuals. Organizations or groups that apply to the councils for funding must be constituted for nonprofit purposes. It is not necessary that such organizations or groups be incorporated

or have tax-exempt status. State humanities councils may not award re grants to for-profit entities.

State humanities councils shall award re grants to provide support for humanities projects selected in open competition on the basis of established criteria that are widely known.

In addition, the administrative requirements set forth in Appendix A of these general terms and conditions shall apply to all re grants awarded by the state humanities councils.

5. Payments and Interest

Grant funds will be paid to the councils on an advance basis, provided that a council's financial management systems meet the standards set forth in Article 16 and the drawdown of funds is limited to the council's immediate cash needs as described in Article 16.g.

Councils are required to maintain advances of federal funds in interest-bearing accounts unless

- a. the council receives total federal advances under grants of less than \$120,000 per year; or
- b. the best reasonably available interest-bearing account would not earn interest in excess of \$250 per year on federal cash balances or would require an average or minimum balance so high that it would not be feasible within the expected federal or nonfederal cash resources.

Councils and re grantees may keep \$250 of the interest earned per fiscal year on all advances of federal grant funds. Bank charges related to maintaining interest-bearing accounts may be paid from the interest earned on those accounts.

Interest in excess of the bank charges and the \$250 a year that is retained by the council shall be remitted annually to the Department of Health and Human Services. If possible, interest should be remitted through an electronic medium such as the Remittance Express (REX) Deposit system. Councils may make payment by check. The check should be identified as interest earned on advances and should be mailed to the HHS Payment Management System, P.O. Box 6021, Rockville, MD 20852.

6. Allowable Costs

The allowability of costs and cost allocation methods for work performed under an NEH general support grant to a state humanities council shall be determined in accordance with OMB Circular A-122, *Cost Principles for Nonprofit Organizations* (2 CFR Part 230). When funds are re granted by a council, one of the following sets of cost principles will apply:

- a. OMB Circular A-21 (2 CFR Part 220) for awards to public and private institutions of higher education.
- b. OMB Circular A-122 (2 CFR Part 230) for awards to nonprofit organizations that are not institutions of higher education.
- c. OMB Circular A-87 (2 CFR Part 225) for awards to state, local, and federally recognized Indian tribal governments.

7. Fund Raising

Section 7(f) of the National Foundation on the Arts and Humanities Act of 1965, as amended, provides the NEH with the authority to allow fund-raising costs to be charged as expenditures against grant and cost-sharing funds in awards made to the state humanities councils. The state humanities councils are therefore authorized to make such charges to general support grant funds.

8. Equipment

Equipment (see definition in the “Glossary of Terms”) may be purchased without the prior approval of the NEH. Subject to the obligations and conditions set forth below, title to equipment acquired under a grant or regrant vests upon acquisition in the council or the regrantee respectively.

a. Use of Equipment

- (1) Equipment must be used by the council or the regrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency.
- (2) The council or regrantee shall also make equipment available for use on other projects or programs currently or previously supported by the federal government, providing such use does not interfere with the work on the projects or programs for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the NEH. If appropriate, user fees may be considered and treated as program income to the grant.
- (3) The council or regrantee shall not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private

companies that provide equivalent services, unless this is specifically permitted or contemplated by federal statute.

- (4) When acquiring replacement equipment, the council or regrantee may use the equipment to be replaced as a trade-in or may sell the equipment and use the proceeds to offset the cost of the replacement equipment.

b. *Management Requirements*

Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, must at a minimum meet the following requirements until disposition takes place:

- (1) Equipment records must be maintained that include a description of the equipment, a serial number or other identification number, the source of equipment, who holds title, the acquisition date, the cost of the equipment, the location, use, and condition of the equipment, and any ultimate disposition data including the date of disposal and the sale price of the equipment.
- (2) A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.
- (3) A control system must exist to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.
- (4) Adequate maintenance procedures must exist to keep the equipment in good condition.
- (5) If the council or regrantee is authorized or required to sell the equipment, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

c. *Disposition*

When original or replacement equipment acquired under a grant or regrant is no longer needed for the original project or program or for other activities currently or previously supported by the NEH, a council may retain, sell, or otherwise dispose of the equipment without further obligation to the NEH.

d. *Right to Transfer Title*

The NEH reserves the right to transfer title to grant-acquired equipment to the federal government or a third party named by the NEH when such a third party is eligible under existing statutes. Such transfers are subject to the following standards:

- (1) The equipment must be identified in the grant award or otherwise made known to the council or regrantee in writing.
- (2) The NEH shall issue disposition instructions within 120 calendar days after the end of the federal support of the project for which it was acquired.
- (3) When title to equipment is transferred, the council or regrantee must be compensated for its share.

9. Real Property, Construction, and Facility Improvement

NEH funds may not be budgeted for any costs related to the purchase of land or facilities by a council or for the construction and renovation of any council-owned facilities. If a council owns or plans to purchase a facility which will be used to carry out its humanities activities, it may not allocate grant funds to cover the down payment, mortgage payments, or other expenses related to the use of the facility. The NEH will, however, negotiate an occupancy rate which will take into account such things as depreciation of the property, maintenance and repair costs, utilities, insurance, taxes, interest, etc.

If a state council funds a regrant project that includes construction or renovation costs, the requirements of the Davis-Bacon Act (Article 29.b. and Appendix B, 3.) and the National Historic Preservation Act (Article 31) will apply to the regrant.

10. Travel Costs

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by those who are in travel status on official business of the council that is directly attributable to specific work under an award or are incurred in the normal course of the administration of the council.

Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the council in its regular operation.

Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), federal government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would: (a) require circuitous routing; (b) require travel during unreasonable hours; (c) excessively prolong travel; (d) result in additional costs that would offset the

transportation savings; or (e) offer accommodations not reasonably adequate for the traveler's medical needs. All air travel that is paid in whole or in part with NEH funds must be undertaken on U.S. flag air carriers, unless one or more of the situations described under foreign travel (Article 11) apply.

11. Foreign Travel

Council board and staff members may undertake foreign travel, that is, travel outside the United States, its territories and possessions, and Canada without prior NEH approval whenever such travel is necessary to carry out council activities. Councils may also approve foreign travel that will be undertaken by a grantee.

However, any air transportation of persons or property from, between, or within a country other than the United States that is paid in whole or in part with NEH funds must be performed on a U.S. flag air carrier when such service is available. **U.S. flag air-carrier service is considered available even though a comparable or different kind of service can be provided at less cost by a foreign carrier or foreign air-carrier service is preferred by, or is more convenient for, the traveler.**

U.S. flag air-carrier service is considered to be **available** unless any of the circumstances listed below applies:

- a. no U.S. flag air carrier provides service on a particular leg of the route;
- b. a U.S. flag air carrier involuntarily reroutes the traveler on a foreign air carrier;
- c. a foreign air carrier operates under a "code-share" arrangement with a U.S. flag air carrier and the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight numbers;
- d. service on a foreign air carrier would be three hours or less, and use of the U.S. flag air carrier service would at least double the en route travel time;
- e. when flying between the United States and another country
 - (1) the use of nonstop or direct U.S. flag air carrier service would extend a person's travel time, including a delay at origin, by 24 hours or more, or
 - (2) where U.S. nonstop or direct service is not available, the use of a U.S. flag air carrier on every portion of the route where it provides service would, when compared to using a foreign air carrier
 - (a) increase the number of aircraft changes a person would have to make outside the U.S. by 2 or more; or
 - (b) extend travel time by 6 hours or more; or

(c) require a connecting time of 4 hours or more at an overseas interchange point.

f. when flying outside the United States, the use of a U.S. flag air carrier would result in any of the situations described in e.(2) above.

Lower cost, convenience, or traveler preferences are NOT acceptable reasons for using a foreign air carrier.

12. Budget Revisions

The budgets for state humanities councils include the anticipated expenditures of NEH grant funds and cost-sharing contributions and are divided into a number of distinct activities, e.g., general management, program services, council-conducted projects, regrants.

With the exception of funds allocated for regrants, councils have the authority to shift funds among budget line items within a program and from one activity or program to another. Funds may also be shifted **into** the regrant program without NEH approval. Once the budget for the funding period has been approved by the NEH, **funds may not be transferred from the regrant category without the NEH's written approval, except to cover increased costs related to the auditing of regrants.**

13. Grant Period

State humanities councils have the responsibility of ensuring that all council and grantee activities that are charged to a particular NEH award take place within the official grant period for that award.

General support grant periods usually run for five years. Supplemental funding will be issued in the second and third years of the grant period. Councils have two years following the last funding period to close out the grant. **The NEH will not extend any general support grant.**

Councils are expected to obligate most of the funds awarded each year by the end of the funding period, but they will be able to carry forward unobligated funds into the succeeding year and may obligate funds that become available through deobligation any time during the grant period, provided that all obligations are liquidated within 90 days after the completion date of the grant period.

14. Reporting Requirements

Each council will periodically be required to submit a report that outlines its activities, accomplishments, and future plans. Details on the content of these reports and when

they are due will be provided by Federal/State Partnership well in advance of the report due dates.

Councils are also required to use the Federal Cash Transactions Report (Standard Forms 272 and 272A) to report the disbursement of federal funds on **all active NEH grants** (including awards from the other NEH grant-making divisions). This report will be submitted on a calendar quarter basis and is due within 30 days after the end of each quarter.

An annual Financial Status Report (Standard Form 269A) will be submitted within 90 days of each anniversary date of the general support grant. A final Financial Status Report will be required within 90 days after the completion date of the grant.

15. Program Income

Program income is money that is earned or received by a council or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and royalties on patents and copyrights. However, income from royalties and license fees for copyrighted material, patents, patent applications, trademarks, and inventions developed by a council do not have to be treated as program income if the revenues are not specifically identified in the grant award.

Councils and their regrantees may deduct the costs incident to the generation of program income, if these are not already charged to the grant or regrant, to determine net program income.

Councils may use the net program income which they generate during the grant period to meet their cost-sharing requirements or to support any of their humanities related activities. **For general support grants, the NEH places no restrictions on the use of program income earned after the grant period.**

16. Financial Management Standards

The financial management systems of the councils and their regrantees must meet the following standards:

- a. *Financial Reporting.* Accurate, current, and complete disclosure of all financial transactions related to federally sponsored projects must be made in accordance with the financial requirements of the grant or regrant.
- b. *Accounting Records.* The councils and their regrantees must maintain records that adequately identify the source and application of funds provided for

financially-assisted activities. These records must contain information pertaining to obligations, unobligated balances, assets, liabilities, expenditures, and income.

Each council or its fiscal agent shall have a double-entry accounting system that is maintained according to generally accepted accounting principles that are applied on a consistent basis. The system should provide for a general ledger, a cash receipts journal, a cash disbursements journal, and a general journal. The general ledger would contain control accounts for regrant funds that are awarded (obligated) and cost-sharing funds that are provided by the council itself. A separate control account, which may be recorded in a memorandum ledger rather than the general ledger, should be established for cost-sharing funds that are provided by grantees and the council's board.

There should also be a subsidiary ledger in which each regrant is listed separately and which contains the following information: the date of the award, the amount of gifts received, the amount of outright and matching funds awarded, the beginning and ending dates of the regrant period, the payments made, the net balance to be paid, and the cost sharing reported by the grantee. The subsidiary ledger account balances for each regrant should be added monthly and reconciled to the general ledger if the council uses an accrual basis system. If the council's records are maintained on a cash basis, the payments recorded in the subsidiary ledger account should be added monthly and reconciled to the general ledger.

To facilitate the management of gifts and matching funds, councils are to maintain a log or journal that contains the name and the classification of the donor, the name of the recipient (if the gift was not given directly to the council), the amount of the gift, the designation of the gift as restricted or unrestricted, the amount of the gift that is certified to the NEH and the date certified, the amount of matching funds awarded by the NEH and the date of that award, and the allocation of the gifts and matching funds to one or more council activities.

- c. *Internal Control.* Effective control and accountability must be maintained for all cash, real and personal property, and other assets. The councils and their grantees must adequately safeguard all such property and must provide assurance that it is used solely for authorized purposes. They must also have systems in place that ensure compliance with the terms and conditions of any awards they administer.
- d. *Budget Control.* Records of expenditures are to be maintained by the cost categories of the approved budget and actual expenditures are to be compared with budgeted amounts.
- e. *Allowable Costs.* The applicable OMB Cost Principles, the *General Terms and Conditions for General Support Grants to State Humanities Councils*, and the

terms and conditions of grant and regrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

- f. *Source Documentation.* Accounting records must be supported by such source documentation as canceled checks, bank statements, invoices, paid bill, donor letters, time and attendance records, activity reports, travel reports, contractual and consultant agreements, and subaward documentation. All supporting documentation should be clearly identified with the grant and general ledger accounts which are to be charged or credited.

Formal agreements with independent contractors, such as consultants, must include a description of the services to be performed, the period of performance, the fee and method of payment, an itemization of travel and other costs which are chargeable to the agreement, and the signatures of both the contractor and an appropriate official of the council.

- g. *Cash Management.* Under the Vendor Express payment system, councils shall normally draw down funds at least once a month and shall have procedures in place to ensure that grant funds on hand do not exceed the council's cash needs for a 30-day period. Councils shall also monitor the cash drawdowns of their grantees to ensure that they conform substantially to the standards of timing and amounts set forth in Appendix A of these grant provisions.

17. Cost Sharing and Cost-Sharing Records

By law the NEH cannot support more than 50 percent of the costs of a state humanities council's activities.¹ The balance of support may come from cash contributions to the council that are made from any source (**including funds from other federal agencies**), program income the council has earned, the allowable costs that a subrecipient incurs in carrying out a council-funded project, and the value of in-kind contributions that are made by a third party.

All cash and in-kind contributions to a project that are provided by the council, a subrecipient, or a third party are acceptable as the grantee's cost sharing when such contributions meet the following criteria:

- Are verifiable from the council's or the subrecipient records;
- Are not included as contributions for any other federally-assisted program;
- Are necessary and reasonable for the proper and efficient accomplishment of project objectives;
- Are types of charges that would be allowable under the applicable cost principles;
- Are used to support activities that are included in the approved project workplan; and

¹This requirement is modified for the four territorial councils covered under the Economic Development of Territories Act of 1984.

- Are incurred during the grant period.

Any contribution that a subrecipient makes to its own project must be based either on the cost incurred to provide that contribution or, in the case of donated buildings or equipment, on depreciation or a use allowance that is computed in accordance with the applicable cost principles. **When a subrecipient is not able to calculate the exact cost involved in contributing its own equipment, space, services, etc. to the project, then the subrecipient must indicate in the project budget the basis for determining the value of the contribution.**

18. Valuation of Third Party In-Kind Contributions

When the grantee's cost sharing includes **third-party in-kind contributions**, the basis for determining the valuation of volunteer services and donated property or space must be documented and must conform to the principles set out below.

- a. Volunteer services that are provided to the council or subrecipient by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing if the service is an integral and necessary part of an approved project or program. Volunteer services shall be valued at rates consistent with those ordinarily paid for similar work within the grantee organization. If the council does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount of fringe benefits may be included in the valuation.
- b. When an employer furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that is reasonable), provided these services involve the same skills for which the employee is normally paid.
- c. The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation, and the value of loaned equipment shall not exceed its fair rental value.
- d. The value of donated space shall 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.
- e. The value assigned to donated supplies or other expendable property should be reasonable and should not exceed the fair market value of the property at the time of donation.
- f. The value of project related services that are provided without charge would be the fee the third party would normally charge for the service.

19. Procurement Standards

NOTE: The standards contained in this section do not relieve the council of the contractual responsibilities arising under its contracts. The council is the responsible authority, without recourse to the NEH, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant or other agreement. Matters concerning the violation of a statute are to be referred to such federal, state, or local authority as may have proper jurisdiction.

When procuring property or services under an NEH grant, a council will follow the same policies and procedures it uses for procurements with its nonfederal funds, but these policies and procedures must adhere to the standards set forth below.

- a. The council and its subrecipients will maintain a system for contract administration that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- b. A written standard of conduct governing the performance of their employees engaged in the award and administration of contracts will be maintained by the council and its subrecipients. No employee, officer, or agent of the council or subrecipient shall participate in the selection, or in the award or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when
 - the employee, officer, or agent,
 - any member of his or her immediate family,
 - his or her partner, or
 - an organization which employs or is about to employ any of the above has a financial or other interest in the firm selected for an award.

The officers, employees, and agents of a council or a subrecipient will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, a council or a subrecipient may set standards governing when the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the council or a subrecipient.

- c. All procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. The council and subrecipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to insure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids

and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the council or subrecipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the council or subrecipient. When it is in the council's or subrecipient's interest to do so, any bid/offer may be rejected.

- d. All councils and their subrecipients shall establish written procurement procedures that provide for, at a minimum, the following procedural requirements:
- (1) The councils and their subrecipients must ensure that all parties with whom they contract for goods or services are not debarred or suspended from doing business with the federal government when (1) the amount of the contract is \$25,000 or more, or (2) the contract requires NEH consent, or (3) the contract is for federally-required audit services.

The councils and their subrecipients may do this in one of three ways:

- (a) by checking the *Excluded Parties List System* at <http://www.epls.gov>;
 - (b) by obtaining a certification from the contractor (available on the NEH website under "Grant Management"); or
 - (c) by adding the following clause to the contract or agreement:

"By signing this contract, you certify that you are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency."
- (2) Proposed procurements are to be reviewed to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.
 - (3) Solicitations for goods and services shall be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and, when used, the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

- (4) The council and subrecipient shall make positive efforts to assure that small businesses, minority owned firms, and women's business enterprises are used when possible. This shall include (i) placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) assuring that these businesses and enterprises are solicited whenever they are potential sources; (iii) contracting with consortiums of small, minority owned, or women's business enterprises; (iv) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency; and (v) considering in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority owned firms, and women's business enterprises.
 - (5) The type of procurement instrument used, e.g., fixed price contracts, cost reimbursable contracts, incentive contracts, purchase orders, will be determined by the council or regrantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods shall not be used.
 - (6) Contracts will be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration should be given to such matters as contractor integrity, the record of past performance, financial and technical resources or access to other necessary resources.
 - (7) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.
 - (8) Procurement records and files for purchases in excess of the simplified acquisition threshold (currently \$100,000) shall include the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and the basis for award cost or price.
- e. Council contracts in excess of the simplified acquisition threshold must provide for
- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and such remedial actions as may be appropriate.

- (2) Termination for cause and for convenience by the grantee, including the manner by which it will be effected and the basis for settlement. In addition, these contracts shall also contain a description of the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (3) Access by the council, the NEH, the Comptroller General of the United States, or any other duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (4) All contracts that are awarded by the council, its regrantees, and their contractors shall comply with the provisions of Appendix B when applicable.

20. Audit Requirements

State humanities councils and regrantees that are subject to these general terms and conditions shall have audits performed that meet the requirements of OMB Circular A-133. In addition, state humanities councils must comply with the CFDA 45.129 section of the OMB Compliance Supplement. (Copies of these documents may be obtained through links from the NEH website [<http://www.neh.gov>] or by writing to the NEH Office of Grant Management.)

21. Record Retention

Financial records, supporting documentation, statistical records, and all other records pertinent to the grant shall be retained by the council and regrantees for three years following the submission of the final Financial Status Report.

Records that relate to audits, appeals, litigation, or the settlement of claims arising out of the performance of the project shall be retained by the council and grantee until such audits, appeals, litigation, or claims are resolved. Unless court action or audit proceedings have been initiated, microfilm copies may be substituted for the original records.

The NEH, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the council and its subrecipients to make audits, examinations, excerpts, transcripts, and copies. Further, any contract in excess of the simplified acquisition threshold (currently \$100,000) that is negotiated by the council for the purposes of carrying out grant activities shall include a provision to the effect that the grantee, the NEH, the

Comptroller General, or any of their duly authorized representatives shall have access for similar purposes to any records of the contractor that are directly pertinent to the grant.

22. CFDA Numbers (Catalog of Federal Domestic Assistance)

The Catalog of Federal Domestic Assistance (CFDA) profiles all federal award programs, projects, services and activities which provide assistance or benefits to the American public and assigns each a specific number. The CFDA is jointly issued by the Office of Management and Budget and the General Services Administration. The CFDA number is important for tracking purposes and is also used by recipients and their auditors to identify the sources of federal awards covered by an A-133 audit. With each notification of funding, the NEH provides the relevant CFDA number to the recipient. The number appears at the bottom of the “Remarks” section of the “Official Notice of Action” for each new award or amendment. State councils must provide this number to their subrecipients.

23. Intangible Property

- a. The council may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant. Similarly, a regrantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under its regrant. The NEH reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use these materials for Federal purposes and to authorize others to do so (see §__36. Intangible Property, OMB Circular A-110 (2 CFR Part 215)).

“Federal purposes” include the use of grant products in activities or programs undertaken by the Federal Government, in response to a governmental request, or as otherwise required by Federal law. However, the Federal Government’s use of copyrighted materials is not intended to interfere with or disadvantage the grantee or assignee in the sale and distribution of the grant product.

The NEH may request copies of a grant product for non-profit use by other state humanities councils if the product forms an integral part of a council conducted program. These copies will be provided to the councils at the cost of reproduction and shipping, and no royalties or other fees will be charged.

- b. Councils or regrantees that are awarded funds for experimental, developmental, or research work are subject to the regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

- c. The NEH has the right to:
 - (1) obtain, reproduce, publish or otherwise use the data first produced under a grant; and
 - (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- d. In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a grant that were used by the Federal Government in developing an agency action that has the force and effect of law, the NEH shall request, and the grantee shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the NEH obtains the research data solely in response to a FOIA request, the NEH may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the grantee, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)). For additional information and definition of terms, please see OMB Circular A-110 (2 CFR Part 215), Section. __36.d.
- e. Title to intangible property acquired under a grant or subaward vests upon acquisition in the grantee. The grantee shall use that property for the originally authorized purpose and shall not encumber the property without the NEH's approval. The NEH reserves the right to determine the disposition of the intangible property when it is no longer needed for the originally authorized purpose.

24. Uniform Administrative Requirements

General support grants to state humanities councils are subject to the uniform administrative requirements of OMB Circular A-110 (2 CFR Part 215). The standards set forth in these *General Terms and Conditions for General Support Grants to State Humanities Councils* and in NEH Enclosure 1 (Financial Reporting Requirements) are consistent with the administrative requirements of A-110.

25. Nondiscrimination

The state humanities councils and their institutional subrecipients must execute projects, productions, workshops, and programs in accordance with the following laws, where applicable.

- a. **Title VI of the Civil Rights Act of 1964**, as amended, provides that no person in the United States shall, *on the grounds of race, color, or national origin*, be excluded from participation in, be denied the 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.)

- b. **Title IX of the Education Amendments of 1972** provides that no person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance. (20 U.S.C. 1681 et seq.)
- c. **The Age Discrimination Act of 1975** provides that no person in the United States shall, *on the basis of age*, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (42 U.S.C. 6101 et seq.)
- d. **Section 504 of the Rehabilitation Act of 1973** provides that no otherwise qualified individual with a disability in the United States, shall, *solely by reason of his/her disability*, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (29 U.S.C. 794)
- e. **The Americans with Disabilities Act of 1990** (“ADA”) prohibits discrimination *on the basis of disability* in employment (Title I), state and local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213)

26. Lobbying Activities

The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, prohibits recipients of federal contracts, grants, and loans from using appropriated funds to influence the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement, loan, or any other award covered by §1352. 18 U.S.C. 1913 makes it a crime to use funds appropriated by Congress to influence members of Congress regarding congressional legislation or appropriations. Finally, Attachment B25 of Office of Management and Budget Circular A-122 designates the following as unallowable charges to grant funds or cost sharing: certain electioneering activities, financial support for political parties, attempts to influence federal or state legislation either directly or through grass-roots lobbying, and some legislative liaison activities.

Therefore, any costs associated with lobbying activities will have to be recorded separately in a council’s books to insure that they are not charged to grant funds or to the council’s mandated cost sharing on its awards. Furthermore, any portion of the state humanities council’s membership dues that are paid to the Federation of State Humanities Councils from the NEH’s grant funds or the council’s mandated cost sharing may not be used to support the Federation’s lobbying activities.

The NEH is required by the provisions of its appropriations act to include the text of 18 U.S.C. 1913 in all of its grant and contract documents.

Text of 18 U.S.C. 1913:

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. Violations of this section shall constitute violations of section 1352(a) of title 31.

27. Drug-Free Workplace Requirements

State humanities councils and their institutional subrecipients are required to maintain a drug-free workplace. The Drug-Free Workplace Act of 1988, 41 U.S.C. 701, and the NEH regulations at Subpart B of 45 CFR Part 1173, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)” require grant recipients to

- a. have an on-going drug-free awareness program;
- b. publish a drug-free workplace statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the recipient’s workplace;
- c. maintain evidence that this statement was given to each employee engaged in the performance of the award;
- d. take actions concerning employees who are convicted of violating drug statutes in the workplace; and
- e. identify in documents kept on file in its office all known workplace(s) where award activities will be carried out. Councils should therefore indicate that, in addition to their office space, anywhere their staff carries out council activities is considered a part of the workplace.

Further details on the drug-free workplace requirements are contained in the NEH regulations referenced above and are available on the NEH website at <http://www.neh.gov/pdf/debarsuspendregs.pdf>.

28. Debarment and Suspension

Federal agencies and grant recipients are prohibited from doing business with any organization or person (as a recipient, subrecipient, contractor, or key employee) if they have been debarred or suspended by any federal department or agency.

The state councils must comply, and must require their subrecipients (e.g., regrantees, seminar participants, and contractors receiving \$25,000 or more) to comply with the NEH regulations contained at Subpart C of 45 CFR Part 1169, "Governmentwide Debarment and Suspension (Nonprocurement)" available on the NEH website at <http://www.neh.gov>.

In the event of suspension or debarment, the information is made publicly available through the *Excluded Parties List System* at <http://www.epls.gov>, maintained by the U.S. General Services Administration.

29. Labor Standards

a. Employment of Professional Performers

Councils and subrecipients that employ professional performers and related or supporting professional personnel under a grant (including but not limited to scriptwriters, actors, extras, musicians, stage hands, scenery designers, technicians, electricians, cinematographers) are subject to the labor standards set forth in 29 CFR Part 505, "Labor Standards on Projects or Productions Assisted by Awards from the National Endowments for the Arts and Humanities." Councils and subrecipients are required to provide written assurance that

- (1) these employees will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined in accordance with 29 CFR 505.3 to be the prevailing minimum compensation for persons employed on similar activities, and
- (2) no part of any project or production which is financed in whole or in part under an NEH grant will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employee engaged in such project or production.

These regulations apply to faculty and staff employed by educational institutions only if such employees are hired primarily to engage in or to assist in performance activities. Regular faculty or staff hired primarily to teach are excluded even though their teaching activities may include performing or assisting in a performance.

The NEH must receive from each state council a signed form ESA-38, "Assurances as to

Labor Standards...” each time a new general support grant is awarded. This form and the applicable Department of Labor regulations may be obtained from the NEH Office of Grant Management.

b. Employment of Laborers and Mechanics under Construction Contracts

Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended, (40 U.S.C. 276a through 276a-5). Recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on NEH-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

Additional information is available by contacting the U.S. Department of Labor, Wage and Hour Division, Division of Contract Standards and Operations, 200 Constitution Avenue, NW, Washington DC 20210, or from the “Davis-Bacon and Related Acts Home Page” at <http://www.dol.gov/esa/programs/dbra/index.htm>.

30. Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 et seq, and 43 CFR Part 10)

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) provides protection of Native American graves and items, i.e., human remains, funerary objects, and sacred objects. NAGPRA applies to any organization which controls or possesses Native American human remains and associated funerary objects and which receives federal funding, even for a purpose unrelated to the Act. More information may be found at <http://www.cr.nps.gov/nagpra>.

31. National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq)

If a state council awards a **regrant**² with NEH funds that includes construction or renovation, the regrantee is required to identify **to the NEH** all property listed or eligible for listing on the National Register of Historic Places that will be affected by the regrant, and to provide any information the NEH may need with respect to the award of NEH funds, to comply with Section 106 of the National Historic Preservation Act of 1966.

Recipients of regrant awards supporting the construction of a free-standing structure, building renovations, or additions to buildings of any age are required to consult with their state historic preservation officer to determine whether a property or site is listed, or is eligible for listing, in the National Register of Historic Places.

² State councils may not use NEH general support grant funds for construction or renovation of council-owned facilities; see Article 9.

- a. If the property is **not** listed or eligible for listing in the National Register, then the preservation officer's eligibility determination may be retained by the state humanities council and filed in the regrant file.
- b. If the property **is** eligible for or is listed in the National Register, then the regrant recipient must obtain the state historic preservation officer's written comments as to the effect of the project on the building or site, in accordance with the guidelines set forth in the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings." **This letter must be provided to the NEH before any federal funds are released to the grantee.**

32. Dissemination of Grant Results

Councils and subrecipients are expected to publish or otherwise make publicly available the results of work conducted under a grant. All publication and distribution agreements shall include provisions giving the government a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the material for government purposes and requiring the acknowledgment of NEH support. The publication shall also include the disclaimer contained in Article 3 of these general terms and conditions.

33. Activities Outside the United States

Prior to undertaking activities outside the United States, the council or the subrecipient shall ensure that all project staff secure the necessary passports, visas or other required documents for entry into foreign countries. Grant recipients shall also obtain the appropriate licenses, permits, or approvals.

Arrangements for liability and medical insurance for staff and foreign workers engaged on project activities are the responsibility of the grantee.

The NEH does not assume responsibility for grantee compliance with the laws and regulations of the country in which work is to be conducted.

Grantees should consult the updated travel advisories and warnings issued by the State Department through the American Citizens Services at 202/647-5225 or fax service 202/647-3000 or http://travel.state.gov/travel_warnings.html.

34. Data Collection

Data collection activities performed under a grant are the responsibility of the council or the subrecipient, and the NEH's support of grant activities does not constitute approval of the survey design, questionnaire content, or data collection procedures. The council or the subrecipient shall not represent to respondents that such data are being collected for, or in association with, the NEH or any other government agency without the specific written approval of the data collection plan or device by the NEH. However, this

requirement is not intended to preclude mention of NEH's support of grant activities in response to an inquiry or acknowledgment of such support in any publication of this data.

The federal government has the right to obtain, reproduce, publish or otherwise use the data first produced under a grant and authorize others to do so for government purposes.

35. Research Misconduct

The NEH will take appropriate action against individuals or organizations upon a determination that misconduct has occurred in proposing, performing, or reviewing research or in reporting results from research activities funded by the NEH in accordance with the *NEH Research Misconduct Policy*. The NEH may also take interim action during an investigation.

Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

The grantee bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with its own institution.

The NEH Inspector General in most cases will refer an allegation of research misconduct made directly to the NEH to the appropriate grant recipient and will rely on the grantee to make the initial response. Circumstances in which the NEH may elect not to defer to the grantee include, but are not limited to, the following: the agency determines the grantee is not prepared to handle the allegation in a manner consistent with this policy; agency involvement is needed to protect the public interest; or the allegation involves an entity of sufficiently small size that it cannot reasonably conduct the investigation itself. At any time, however, the NEH may proceed with its own inquiry or investigation. If the allegation of research misconduct is first made to the grantee, the grantee will notify the NEH if the allegation meets the definition of research misconduct given above, and if the grantee's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation.

At any time during an inquiry or investigation, the grantee will immediately notify the NEH if NEH resources or interests are threatened; if public health or safety is at risk; if research activities should be suspended; if there is reasonable indication of possible violations of civil or criminal law; if federal action is required to protect the interests of those involved in the investigation; if the grantee believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or if the research community or public should be informed.

The NEH will make a finding of misconduct or take action on such a finding only after careful inquiry and investigation by a grantee, by another federal agency or by the NEH. In the event of a finding of research misconduct, the NEH will determine what administrative actions are appropriate.

Administrative actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; or suspension and debarment in accordance with applicable NEH and government-wide rules on suspension and debarment. In the event of suspension or debarment, the information is made publicly available through the *Excluded Parties List System* at <http://www.epls.gov>, maintained by the U.S. General Services Administration. If the NEH Inspector General believes that criminal or civil fraud violations may have occurred, the Inspector General shall promptly inform the Department of Justice.

The text of the *NEH Research Misconduct Policy* is available at <http://www.neh.gov/grants/guidelines/researchmisconduct.html>. Possible misconduct in activities funded by the NEH should be reported to the NEH Office of the Inspector General, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, (202) 606-8350.

36. Code of Ethics for Projects Related to Native Americans

The state councils have the responsibility of ensuring that researchers and scholars working on NEH-sponsored projects (both council-conducted and regrants) related to Native Americans, Aleut, Eskimo, or Native Hawaiian peoples will adhere to certain provisions protecting the rights of native communities and peoples as detailed in the *Code of Ethics for Projects Related to Native Americans*. The code is available on the NEH website at <http://www.neh.gov>.

37. Suspension and Termination

Awards may be terminated in whole or in part

- a. by the NEH, if a grantee materially fails to comply with the terms and conditions of an award;
- b. by the NEH when the NEH has other reasonable cause;
- c. by the NEH, when ordered under the NEH Research Misconduct Policy;
- d. by the NEH with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion of the project to be terminated; or

- e. by the grantee upon sending to the NEH written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion of the project to be terminated. However, if the NEH determines that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety either unilaterally or with the consent of the grant recipient.

When the NEH determines that a grantee has failed to comply with the terms and conditions of the award, the NEH may suspend or terminate the award for cause. Normally, this action will be taken only after the grantee has been notified of the deficiency and given sufficient time to correct it, but this does not preclude immediate suspension or termination when such action is required to protect the interests of the government.

In the event that an award is suspended and corrective action is not taken within 90 days of the effective date, the NEH may issue a notice of termination. No costs that are incurred during the suspension period or after the effective date of termination will be allowable except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of the NEH, could not have been reasonably avoided.

Within 30 days of the termination date, the grantee shall furnish to the NEH a summary of progress achieved under the award, an itemized accounting of charges incurred against award funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

38. Termination Review Procedures

A state humanities council that has received a notice of termination may request the NEH's review of the termination action. The request must be postmarked no later than thirty days after the date of the termination notice and should be addressed to the Deputy Chairman, National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

The request for review must contain a full statement of the council's position and the pertinent facts and reasons that support such a position. The Deputy Chairman will promptly acknowledge the request for review and appoint a review committee of at least three staff members. Pending the resolution of the review request, the notice of termination will remain in effect.

None of the review committee members may be staff from the Federal/State Partnership or the Office of Grant Management who were involved in any way in recommending termination or were responsible for monitoring the programmatic or administrative aspects of the grant. The committee will have full access to all relevant background materials. The committee may also request the submission of additional information

from the council or the NEH staff and, at its discretion, may meet with representatives of both groups to discuss the pertinent issues. All review activities will be fully documented by the committee. Based on its review, the committee will present its written recommendation to the Deputy Chairman, who will advise the parties concerned of the final decision.

Appendix A

ADMINISTRATIVE REQUIREMENTS THAT APPLY TO REGRANTEES

With the exception of reporting forms and methods of payment, the uniform administrative requirements of Office of Management and Budget Circular A-110 apply not only to the state humanities councils but also to their grantees. The administrative requirements that are most relevant to the councils' granting programs are included in this appendix.

1. Payments

Councils are to pay their grantees on an advance basis, provided the grantees' financial management systems meet the standards for fund control and accountability found in Article 16 of these general terms and conditions. Awards of \$500 or less may be paid in one installment, and the councils may advance a grantee up to \$10,000 for a three-month period. When a grantee's cash needs exceed \$10,000 for a three-month period, advances will be limited to the grantee's anticipated cash expenditures for a thirty-day period.

Councils may withhold a small amount of a grant award (not more than 10 percent) if this is the only way to ensure the timely submission of final reports from the grantee. Councils should take care that this delay in funding does not jeopardize the project or cause serious inconvenience to the grantee. Final payment should be made promptly once the required reports are received.

2. Interest Earned on Advances

Grantees are not required to maintain advances of federal funds in interest-bearing accounts unless they receive \$120,000 or more in advances during their fiscal year. If a grantee chooses to deposit these funds in an interest-bearing account, it may retain the first \$250 in interest earned each fiscal year. Interest earned in excess of this amount on funds advanced by a council shall be forwarded to the council and returned to the Department of Health and Human Services, as detailed in Article 5, "Payments and Interest."

3. Program Changes

All changes in the scope or the objectives of a project, the project director, or the duration of the project should be approved in writing by councils. Councils may also require that their approval be obtained before a grantee may subcontract or transfer substantive project work.

4. Budget Changes

Councils may require grantees to seek approval for budget changes that involve the addition or deletion of budget items, the inclusion of costs that were specifically disallowed by the terms of the grant award, the transfer of funds allotted for training purposes, for example, participant stipends and fellowship awards, and the transfer of funds that were budgeted for direct costs to absorb increases in indirect costs or indirect-cost type items.

When federal funding does not exceed \$100,000, councils may not restrict grantees from transferring funds among direct cost categories other than training, provided the scope or objectives of the project are not changed. Councils may, however, restrict the transfer of funds among direct costs categories when the federal share of funding exceeds \$100,000 and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the total budget, which would include cost sharing as well as grant funds.

5. Reporting Requirements

Councils may not require the submission of performance or financial reports more frequently than quarterly, and grantees should be permitted to submit payment requests whenever they need grant funds.

Grantees shall have 30 days following the reporting period to submit interim reports and 90 days from the completion date of the grant period to submit final reports.

6. Program Income

Councils shall stipulate in their grant agreements how the grantee is to use program income earned during the grant period. They may, if they wish, require that program income be deducted from the grantee's total allowable costs to determine net allowable costs or they may allow the income to be used as the grantee's cost sharing or to cover additional project costs.

Unless a council specifies in the grant award how income earned after the grant period and income earned from license fees and royalties on patents and copyrights is to be used, the grantee may dispose of that income in any way it chooses.

When a council requires grantees to return program income earned after the grant period, the amount of income returned should be proportionate to the council's funding of the project.

7. Suspension and Termination Procedures

Written procedures for the suspension and termination of regrants and the review of a termination action should be issued as a part of the terms and conditions of a council award.

8. Acknowledgment of NEH Support and Disclaimer

The provisions of Article 3 apply to regrantees.

9. Research Misconduct Policy

The provisions of Article 35 apply to regrantees.

10. Government-wide Requirements

The Nondiscrimination (Article 25), Lobbying Activities (Article 26), and Debarment and Suspension (Article 28) requirements apply to regrantees.

Appendix B

PROVISIONS APPLICABLE TO CONTRACTS

Contracts issued by a council or its subrecipient shall contain the following provisions as applicable:

1. Equal Employment Opportunity

All construction contracts in excess of \$10,000 that are awarded by councils, their contractors, or subrecipients must contain a provision requiring compliance with Executive Order 11246, entitled “Equal Employment Opportunity” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

2. Copeland “Anti-Kick Back” Act (18 U.S.C. 874)

All contracts and subgrants in excess of \$2,000 for construction or repair awarded by councils and subrecipients shall include a provision for compliance with the Copeland “Anti-Kick Back” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The council shall report all suspected or reported violations to the federal sponsoring agency.

3. Davis-Bacon Act (40 U.S.C. 276a)

All construction contracts awarded by the councils and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The council shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The council shall report all suspected or reported violations to the federal sponsoring agency.

4. Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects (Executive Orders 13202 and 13208)

Effective February 18, 2001, grantees and subrecipients awarding new construction contracts shall ensure that neither the bid specifications, project agreements, nor other controlling documents for construction contracts shall:

- (a) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
- (b) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)

Where applicable, all contracts awarded by councils in excess of \$100,000 for construction contracts and other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek.

Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions and Materials Generated Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Government and the council in any resulting invention in accordance with 37 CFR Part 401 and any implementing regulations issued by the sponsoring agency.

7. Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as Amended

Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal

Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the federal sponsoring agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors who apply or bid for an award of \$100,000 or more must file a certification with the council stating that they will not and have not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Such contractors must also disclose to the council any lobbying that takes place in connection with obtaining any Federal award.

Appendix C

FEDERAL GUIDANCE

1. Buy American Act

Consistent with the Buy American Act, 41 U.S.C. 10a-c and Public Law 105-277, state humanities councils and regrantees who purchase equipment and products with grant funds should purchase only American-made equipment and products.

2. Welfare-to-Work Initiative

To supplement the welfare-to-work initiative, state humanities councils and regrantees are encouraged, whenever possible, to hire welfare recipients and to provide additional needed training and/or mentoring.

3. Seat Belt Usage

Executive Order 13043 of April 16, 1997 requires each Federal agency to encourage contractors, subcontractors and grantees to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.