



Colorado  
Creative  
Industries

CBCA

# Understanding NEA Requirements for CCI Colorado Creates FY26 Grant Applicants

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Hosted by Colorado Business Committee for  
the Arts (CBCA)



## Zoom Guidelines

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- This webinar is NOT being recorded. CCI will send a follow-up email.
- Please stay muted unless called on.
- Feel free to turn your camera off to focus on the speakers.
- Closed captions are available, which you can turn on or off.
- Put questions in the Chat. We will do our best to collect them as we go.
- **THIS WEBINAR IS NOT LEGAL ADVICE.** We cannot answer specific questions about specific organizations or applications.



## Meeting Agenda

1. Background on CCI and National Endowment for the Arts (NEA) Partnership Agreement
2. Updates to NEA Terms and Conditions
3. Assessment of risk and compliance
4. Next steps



## CCI Partnership Agreement with the NEA

- Annual contract
- CCI is the pass through entity and recipients of CCI Colorado Creates grant are **subrecipients**
- CCI is held to to the same terms and conditions and allowable expenses as our subrecipients when using federal funds from this partnership agreement.
- The period of performance ends June 30, 2026.

# Colorado Creates Grantees

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- Colorado Creates matches state and federal funds, as required by our partnership agreement with the NEA.
- All grantees are subrecipients and held to federal terms and conditions outlined by the NEA.
- Most terms and conditions and compliance requirements have remained the same as previous years.
- CCI received our new partnership agreement in the middle of the application cycle for Colorado Creates.
- Recommended applicants will receive an offer letter so they have time to review the terms and conditions and officially accept their offer of funding.



# Colorado Business Committee for the Arts

- Connect arts & business to advance Colorado's creative economy
- State Arts Advocacy Organization
- Colorado Attorneys for the Arts (CAFTA)



# Your Responsibilities as an NEA Award Recipient or Subrecipient

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



## Guidance (FAQs) from NEA

- There are two provisions you will have to certify to in the course of applying for, and receiving, a federal award.
  - Certify your organization's compliance with federal anti-discrimination laws
  - Certify that you do not operate any DEI programs that violate federal anti-discrimination laws

## Executive Order 14173

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Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, provides that award recipients should (A) agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and (B) certify that it does not operate any programs promoting "diversity, equity, and inclusion" (DEI) that violate any applicable Federal anti-discrimination laws.

# Guidance (FAQs) from NEA

- Certify that any DEI-related activity you conduct, regardless of its connection to your federal award, does not violate applicable federal anti-discrimination laws.



# Guidance (FAQs) from NEA

- Applicants (subrecipients) may not intentionally discriminate on the basis of race, color, or national origin in their programs or activities under federal law, whether or not those activities are funded by a federal grant.
- Whether or not a particular activity constitutes unlawful discrimination does not turn solely on whether it is labeled "DEI" or uses terminology such as "diversity," "equity," or "inclusion."



# Guidance (FAQs) from NEA

- For example, applicants (subrecipients) with programs focused on interests in particular cultures, heritages, and areas of the world would not in and of themselves violate Title VI, assuming they are open to all participants regardless of race, color, national origin, or other protected criteria.



# Guidance (FAQs) from NEA

- These certifications may change in the future.
- May be new court rulings concerning current executive orders.
- May be new executive orders.



# Legal Perspective & Risk Assessment

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Michelle B. Ferguson, Director, Ireland Stapleton

Tom Downey, Director, Ireland Stapleton



# What is Illegal DEI?



**I R E L A N D**  
**S T A P L E T O N**

LEGAL ADVICE  
WITH PERSPECTIVE

# Balancing Diversity, Equity & Inclusion with “Illegal DEI”

- EEOC Guidance on DEI-Related Discrimination (issued end of March 2025): “DEI initiatives, policies, programs or practices may be unlawful if they involve an employer taking an employment action motivated – in whole or in part – by an employee’s or applicant’s race, sex or another protected characteristic.”
- If lawful under Title VII previously, remains lawful (set-asides, quotas, preference-based hiring)
- Focus on “everyone” -- equity and inclusion
- Consider defining these terms and not using acronym, or finding different words to identify goals

# U.S. DOJ Memorandum

- February 5<sup>th</sup> memo saying that the DOJ Civil Right's Division will investigate, eliminate and penalize illegal DEI preferences, mandates, policies, in private sector and educational institutions that receive federal funds.
- Carves out “educational, cultural or historical observances such as Black History Month, International Holocaust Remembrance Day, or similar events – that celebrate diversity, recognize historical contributions and promote awareness without engaging in exclusion or discrimination”

# Evaluate

- Consider all programs and employment practices.
  - Do you have diverse slate hiring or promotion practices;
  - DEI aspirational goals;
  - Board requirements for diverse members?
  - Give grants, discounts or preferences to groups, vendors, suppliers, organizations based on protected characteristic?
- Consider risk profile for DEI programs. What would a public search of your website and documents reveal about DEI?  
Conduct a search on your organization.

# Evaluate Continued

- Are opportunities open to all, without regard to an individual's sex, race, or any other protected status?
- Does the program generate opportunities to participate based on an individual's qualifications?
- Is the availability of the program effectively communicated to all individuals so participation is open to all?
- Does program provide opportunities to develop relevant qualifications for all individuals?
- Are hiring practices consistent for all applicants (consider where you are posting for positions)
- Any employee support/resource groups or "affinity" groups?

# Discussion Framework for Staff & Board

- **Acknowledgment** - Acknowledged that this is a very uncertain time with all the issues coming at us from the Federal level.
- **Current Status** - Shared what you know about the current DEI conversations on a national level.
- **DEI Audit** – Explain what the entity’s current programs and references (website, employee manual, etc.) to Diversity, Equity and Inclusion.
- **Conversation** - Open the conversation for people to share their initial thoughts and worries about these issues.
- **Positioning** - Share your unique position as a non-profit, your mission versus your risk, such as do you receive direct or indirect federal funds.

# Discussion Framework for Staff & Board Cont.

- **Risks** - Discuss possible challenges/risks based on our decisions going forward. (See Tiers of Risk in Assessing Compliance Policy)
- **Action Steps** – Affirmatively decide the entity’s course of action among these options:
  - 1) Eliminate all programs and references related to Diversity, Equity and Inclusion; or
  - 2) Make no substantive changes, but change the wording (A Thesaurus game); or
  - 3) Affirmatively decide to make no substantive or verbiage changes.
- **Safe Execution**
  - Discuss internal/external communications and timelines, if any.

# TIERS OF RISK IN ASSESSING COMPLIANCE POLICY

Before making any policy decisions about how much or little your entity wishes to cooperate with federal agents, please consider the following risk factors:

1 – **Criminal**. Any individual or entity refusing to cooperate with federal agents may be at risk for criminal charges, including obstruction of justice. Even if you are refusing to cooperate with an illegal order, and the courts ultimately agree with you, the criminal process may be grueling and costly.

2 – **Regulatory**. If individuals or the entities hold any federal licenses, the administration may seek to suspend or revoke those licenses. For example, a physician refusing to divulge staff or patient information may lose their DEA license allowing them to prescribe medicine. A nonprofit refusing to allow entry to its facility may lose its 501C status.

# TIERS OF RISK IN ASSESSING COMPLIANCE POLICY CONTINUED...

- **3 – Civil.** Any individual with a government contract or grant, may have them terminated for failing to cooperate with a federal search warrant. Due process rights attach to each of these tiers of risk. Criminal defendants have the most protections. Licenses are property rights, requiring notice and a hearing, but not all the protections of criminal defendants. Loss of a federal contract or grant offers only civil protections, such as the possibility for a breach of contract suit and/or challenging the legality of the termination.

# Questions?

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- We cannot provide legal advice
- We cannot respond to specific questions about specific organizations or applications



# Resources

- NEA FAQs
- Colorado Attorneys for the Arts (CAFTA)
  - Referrals and consultations
- CO Lawyers Committee
- CO Nonprofit Association
- Colorado Arts Action Network
- Americans for the Arts
- Creative West





## Next Steps from CCI

- Recap email
- If recommended for funding, your organization will receive an offer letter that you will have to officially accept.

**Thank you!**