



January 8, 2014

Mr. Mark Smith
Director and Librarian
Texas State Library & Archives Commission
1201 Brazos Street
P.O. Box 12927
Austin, TX 78711-2927

RE: Approval of a Waiver of the FY2011 MOE Requirement

Dear Mr. Smith:

I am writing, on behalf of the Institute of Museum and Library Services (“IMLS” or “Institute”), in response to your appeal letter and supplement (dated December 11, 2013 and December 30, 2013, respectively) requesting a waiver of the statutory Maintenance of Effort (“MOE”) requirement for the Fiscal Year 2014 Grants to States allotment to the Texas State Library & Archives Commission (“SLAA”). The State has requested a waiver for the amount of \$2,924,602 in State financial support for library services for the FY 2011 grant period.¹ We have reviewed your appeal letters and related documentation, and on the basis of the information and materials provided, we are approving a waiver of the MOE requirement for the Fiscal Year 2014 Grants to States allotment.

Under 20 U.S.C. § 9133(c)(1), a State Library Administrative Agency is required, as a condition of funding from IMLS’s Grants to States Program, to maintain a certain level of State expenditures for library programs that are consistent with the purposes of the Library Services and Technology subchapter of 20 U.S.C. Chapter 72. This MOE requirement helps to ensure that Federal funds supplement, rather than replace, State funds in supporting library activities, and the Institute is required by law to reduce the allocation otherwise payable to a State if the State fails to maintain its expenditures.

However, there may be unusual circumstances that prevent a State from maintaining its level of library program support. In such circumstances, it may be appropriate for the Institute to waive the statutory requirement. As provided in 20 U.S.C. § 9133(c)(3):

The Director may waive the [MOE requirement] if the Director determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in financial resources of the State.

¹ In June 2013, the SLAA submitted to IMLS a request for a waiver for the amount of \$11,530,835 in State financial support for the FY 2011 grant period. In December 2013, after a request by the SLAA, IMLS approved: (1) a revision of the methodology by which Texas’s MOE was calculated; and (2) revised financial status reports for Fiscal Years 2007-2011. Using this revised MOE methodology, Texas’s MOE requirement for the relevant period was \$8,540,125. The revised MOE methodology must be consistently applied in calculating Texas’s MOE for future reporting.

IMLS considers each MOE waiver request on its own merits, taking into account a variety of factors in determining whether a waiver is equitable due to exceptional or uncontrollable circumstances. These factors include, for example, the extent to which the financial resources of the State have declined; actions taken by the State to ameliorate the situation; and how a reduction to the SLAA's LSTA allotment would impact the SLAA's capacity to provide library services and programs.

In its earlier Decision Letter, IMLS recognized that Texas experienced a precipitous and unforeseen decline in financial resources, which resulted in reductions for State agencies and institutions of higher education. These reductions in general revenue spending in SFY 2012 affected formula/nonformula funding to institutions of higher education; student financial aid; the State's contribution to retired teacher and State employee retirement and healthcare programs; certain direct services provided by State agencies; capital purchases and agency administrative functions; and grants to local governmental entities and non-governmental organizations. See Decision Letter, dated September 30, 2013, from M. Marx.

The agency expressed its concern, however, that State support for library services appeared to have been reduced disproportionately relative to support for other State services. We have carefully reviewed the content and material supporting your appeal, and concur with your assessment that the actual funding situation was more complex, with significant financial fluctuations among agencies.

Moreover, the record indicates that, once the State was in a position to take action to support the State's library programs and services, it did so by restoring funding to the SLAA. Indeed, the agency received an increase of 64.46% in funding for the SFY 2014/2015 biennium. The materials provided demonstrate that this increase to the SLAA's budget in the 2014/2015 biennium was greater than that provided to most other State agencies. As you noted in your December 11 appeal letter, "generally speaking, the agencies that had deeper cuts in the 2012/2013 biennium saw greater rebound in the 2014/2015 biennium." The significant restoration of SLAA funding for the 2014/2015 biennium not only paints a picture of proportional treatment with other agencies, but should also place the SLAA in a much better position, moving forward, to sustain or increase the current level of critical library services. In this regard, we note that this is the first time in which the State has failed to meet its MOE requirement and requested an MOE waiver. These facts evidence the State's commitment to supporting library programs and services and weigh in favor of granting a waiver under the circumstances.

IMLS has also considered the potential impact upon the SLAA's capacity to provide critical library services and programs should there be a cut to the State's LSTA allotment. In your December 30 appeal supplement, you noted the potential elimination of the following programs: "Statewide competitive grants to libraries" which served over 255,000 residents in SFY 2013; "Digitization of Texas treasures" which supports public access to historic materials; "Adoption of mobile technologies" which enables residents to access information resources through their mobile devices; "Assistance in building web presence for small libraries" which improves access

to library materials on the web; and “Support for the Talking Book Program” which serves over 15,000 people with disabilities. IMLS recognizes that the elimination of these services would significantly harm those who are served by the SLAA’s programs and services.

Relatedly, we also note that a cut to the State’s LSTA allotment in FY2014 may also lead, indirectly, to an inefficient use of State resources. Given the fact that, as described above, State support for library programs and services will be increasing in the SFY 2014/2015 biennium, we are concerned that, if the State’s LSTA allotment in FY2014 were to be reduced, it is likely that significant State resources may be expended in the future in *reinstating* certain SLAA programs and services which were eliminated or curtailed because of the reduction in the State’s LSTA allotment. Such inefficiencies could include the costs of rehiring, and retraining staff, and restarting the programs and services.

As you know, the purpose of the MOE requirement is to ensure ongoing State support of library services to meet the critical information and educational needs of the public. Because a reduction in State funding can severely limit access to essential services, waivers are permitted only in very rare situations. Indeed, they are the exception, not the rule. While we have approved a one-time waiver under the specific circumstances above, it is imperative that you monitor State funding for library services to ensure that Federal funds enhance and do not replace State support.

Sincerely,



Susan H. Hildreth
Director

cc: Maura Marx, Deputy Director, Office of Library Services
Laurie Brooks, Associate Deputy Director, State Programs